

1
2 UNITED STATES BANKRUPTCY COURT

3 EASTERN DISTRICT OF NEW YORK

4 Case No. 10-44815(ESS)

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7 In the Matter of:

8
9 CHRISTINE PERSAUD,

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11 Debtor.

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14
15 United States Bankruptcy Court

16 Conrad B. Duberstein U.S. Bankruptcy Courthouse

17 271 Cadman Plaza East - Suite 1595

18 Brooklyn, NY

19
20 November 14, 2011

21 9:26 AM

22
23 B E F O R E:

24 HON. ELIZABETH S. STONG

25 U.S. BANKRUPTCY JUDGE

1

2 Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

3 Adv. Proc.: 1-10-01228 Klein v. Persaud, et al.:

4 [1] ADJOURNED PRE-TRIAL CONFERENCE re Complaint

5 Adjourned from: 10/19/10, 11/4/10, 12/14/10, 1/5/11, 2/2/11,
6 3/10/11, 4/7/11, 5/20/11, 6/17/11, 8/16/11, 9/27/11, 10/28/11,
7 11/8/11

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9 Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

10 [187, 228] ADJOURNED HEARING (RE: related document(s)[182]

11 Application to Employ Troutman Sanders LLP

12 Adjourned from: 9/27/11, 10/28/11, 11/8/11

13

14 Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

15 [204] ADJOURNED HEARING on Application for Order to Show Cause
16 (RE: related document(s)[195] Motion for 2004 Examination of
17 Melquisedec Escobar

18 Adjourned from: 9/8/11, 9/13/11, 9/20/11, 9/22/11, 10/28/11,
19 11/8/11

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21 Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

22 [293] HEARING on the Reconsideration of the Order to Show Cause

23 Application (RE: related document(s)[195] Motion for 2004

24 Examination of Melquisedec Escobar

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Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[214] ADJOURNED HEARING on Application for Order to Show Cause
(RE: related document(s)[196] Motion for 2004 Examination of
Philip Gottehrer

Adjourned from: 9/8/11, 9/13/11, 9/20/11, 9/22/11, 10/28/11,
11/8/11

Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[295] HEARING on the Reconsideration of the Order to Show Cause
Application (RE: related document(s)[272] Order to Schedule
Hearing (Generic), [196] Motion for 2004 Examination of Philip
Gottehrer

Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[203] ADJOURNED HEARING on Application for Order to Show Cause
(RE: related document(s)[197] Motion for 2004 Examination of
Joel Klein

Adjourned from: 9/8/11, 9/13/11, 9/20/11, 10/28/11, 11/8/11

Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[292] HEARING on the Reconsideration of the Order to Show Cause
Application (RE: related document(s)[197] Motion for 2004
Examination of Joel Klein

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Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[201] ADJOURNED HEARING on Application for Order to Show Cause
(RE: related document(s)[198] Motion for 2004 Examination of
Caring Home Agency

Adjourned from: 9/8/11, 9/13/11, 9/20/2011, 9/22/11, 10/28/11,
11/8/11

Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[296] HEARING on the Reconsideration of the Order to Show Cause
Application (RE: related document(s)[198] Motion for 2004
Examination of Caring Home Care Agency

Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[202] ADJOURNED HEARING on Application for Order to Show Cause
(RE: related document(s)[199] Motion for 2004 Examination of
Abraham Klein

Adjourned from: 9/8/11, 9/13/11, 9/20/11, 9/22/11, 10/28/11,
11/8/11

Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[294] HEARING on the Reconsideration of the Order to Show Cause
Application (RE: related document(s)[199] Motion for 2004
Examination of Abraham Klein

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Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

[179] ADJOURNED MOTION for Violation of Automatic Stay and to
Void Certain Decisions of the State Supreme Court Issued in
Violation Thereof

Adjourned from: 9/27/11, 10/28/11, 11/8/11

Main Case: 1-10-44815-ess Christine Persaud, Chapter 7

Adv. Proc.: 1-11-01456 Klein v. Pereira

[1] PRE-TRIAL CONFERENCE re Complaint

Adjourned from: 10/28/11, 11/8/11

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Let's get your appearances for the record, please.

MR. STREMBA: Your Honor, Lee Stremba of Troutman Sanders for the trustee and the firm.

MR. CAMPO: John Campo of Troutman Sanders, Your Honor, for the trustee and the firm.

MR. PEREIRA: John S. Pereira, the Chapter 7 trustee.

MR. ZILBERBERG: Mendel Zilberberg for Creditor Klein with of counsel, Joe Lewittes, and of counsel, Perry Krinsky, as well as Sara Moskowitz. Thank you, Your Honor.

MR. KRINSKY: Good morning, Your Honor.

THE COURT: Thank you. And I apologize for the later than expected start. I had some unanticipated matters that had to be taken care of first thing this morning. So I believe we are here to resume the testimony of Mr. Klein, is that right, first and foremost?

MR. KRINSKY: Yes, Your Honor.

THE COURT: Okay. Mr. Klein, you can take the stand.

(Pause)

THE COURT: All right.

MR. KRINSKY: May I inquire, Your Honor?

THE COURT: Yes, you may. I remind you that you have -- your affirmation continues.

RESUME DIRECT EXAMINATION

1 BY MR. KRINSKY:

2 Q. Good morning, Mr. Klein.

3 A. Good morning.

4 Q. Mr. Klein, did there come a point in time in the summer of
5 2008 that you contemplated investing in China?

6 A. Yes. In July of 2008, we were thinking of possibly
7 investing in a real estate development in China.

8 Q. And did there come a point in time that you sought to
9 retain and did retain counsel in connection with that project?

10 A. Yeah. Right around the same time, in July of 2008, we
11 reached out to Troutman Sanders for potential representation in
12 the matter of the real estate investment in China.

13 Q. Did there come a point in time that you actually did
14 retain the Troutman Sanders firm in connection with the China
15 project?

16 MR. STREMB: Your Honor, it's a leading question.

17 THE COURT: Did there come a time? Overruled. You
18 may answer.

19 A. In July -- end of July, beginning of August, we retained
20 Troutman Sanders in connection with the project in China.

21 Q. In connection with that retention, what, if any, services,
22 legal services, did the Troutman firm agree to provide to you
23 in connection with the China project?

24 A. They agreed to provide legal due diligence, project due
25 diligence, negotiations, contract negotiations, finance related

1 services and as well as possibly also raising capital. That's
2 the general categories.

3 Q. And specifically, with respect to those services, who, if
4 anyone, from the Troutman Sanders firm provided those services
5 to you in connection with the China project?

6 A. Mr. Epstein. We discussed those issues on July 30th on
7 the conference call. We also basically discussed that later
8 on. And it was Mr. Epstein and, I guess, Aurora Cassirer.

9 Q. Beginning in the summer of 2008 until December of 2008,
10 did you have discussions with Mr. Epstein or other members of
11 the Troutman Sanders firm regarding the China project?

12 A. Yeah. We had discussions with Mr. Epstein and Mr. Wang in
13 reference to the China project and we discussed the different
14 categories that we originally discussed.

15 Q. When you refer to Mr. Wang, who is -- just for all of our
16 benefit, who is Mr. Wang?

17 A. Mr. Wang is an attorney in the Troutman Sanders firm in
18 Shanghai and he seemed to be doing a lot of the work on the
19 project.

20 Q. After you retained the Troutman Sanders firm, what were
21 the subject matters that were discussed with the Troutman
22 Sanders firm regarding the China project?

23 A. We discussed the legal due diligence, the project due
24 diligence. We discussed contract negotiations. We discussed
25 financing related matters. That was the general categories.

1 Q. Okay. First, I'd like to talk to you briefly. With
2 respect to the issue of legal due diligence, what were the
3 issues discussed with the Troutman Sanders firm regarding the
4 China project?

5 A. China, I guess, being somewhat different than our general
6 understanding, we needed to make sure that whatever was being
7 presented to us from the developer's side on the project would
8 actually fit within the China legal system. We needed to also
9 make sure that monies invested, specifically because of being
10 foreign currencies, that it would be able to be legally
11 invested into the country and eventually repatriated into
12 original currencies. And we had to make sure that it would fit
13 into the legal system.

14 Q. You mentioned a moment ago also the issue of corporate
15 structuring. Generally speaking, what were the issues
16 discussed with respect to corporate structuring with the
17 Troutman Sanders firm in connection with the China project?

18 A. Very similar, in order to make the investment, we would
19 have to set up a corporate structure that would fit within the
20 legal system that would allow for foreign currencies
21 specifically to be injected into the company and later on
22 repatriated into its original currencies.

23 Q. You also mentioned a moment ago, contract negotiations.
24 What were the discussions that you had generally about contract
25 negotiations with the Troutman Sanders firm in connection with

1 the China project?

2 A. One example is we were working on a letter of
3 understanding with the developer. And that was a big part of
4 the negotiations of making sure that the whole understanding is
5 right.

6 Q. And lastly, you mentioned the issue of injecting currency.
7 What were, if any, the discussions that you had with the
8 Troutman Sanders firm about with respect to financing of the
9 China project?

10 A. There is a, I guess in the China system, somewhat there is
11 more than just making a company and investing money through the
12 company into the project. There are many rules of how to fund
13 the company or funding that needs to be done within a certain
14 amount of time not even related to the actual funding of the
15 project. And because of that, we needed to make sure that the
16 funding is there in order to make the company work as well as
17 structure the company according to whatever funding was
18 actually available and what we still would need to raise.

19 Q. Did there come a point in time that you discussed with the
20 Troutman Sanders firm a company called Caring?

21 A. Yes. It was in relation to the different vehicles that we
22 discussed that we were thinking of we would be able to invest
23 funds through those different vehicles.

24 Q. By the way, when I say discussions with the Troutman
25 Sanders firm, specifically in connection with Caring in those

1 discussions, who did you have those discussions with about
2 Caring?

3 A. With Mr. Epstein and Mr. Wang.

4 Q. And a moment ago, you mentioned different vehicles,
5 financial vehicles. What were, if any, the different financial
6 vehicles that were discussed as possibilities for investing in
7 China?

8 A. Flexo Craft, which is one of the companies I'm affiliated
9 with, was a potential vehicle as a public company and being
10 able to possibly raise funds. Venture Capital that we
11 discussed with Troutman Sanders was a potential vehicle as well
12 as my personal finances or my personal monies which a big
13 portion of that was in Caring.

14 Q. In discussing your ownership interest in Caring, without
15 telling us specifically what was said --

16 MR. STREMB: Objection, Your Honor. There's no such
17 testimony.

18 THE COURT: Well, let's have a complete question. It
19 will help me assess an objection.

20 Q. You mentioned a moment ago your ownership interest in
21 Caring. Without telling us specifically what you said, what
22 categories of information did you provide to the Troutman firm
23 regarding that ownership interest?

24 THE COURT: You may answer.

25 A. I discussed with them my investment in Caring. I

1 discussed with them -- which was at that time I accrued profits
2 in Caring, my ownership rights and I discussed with them
3 different -- a way that I would have to get the money out from
4 Caring in order to invest in the China project.

5 Q. Mr. Klein, when you say different ways to get your money
6 out of Caring to invest in the China project, what specifically
7 do you mean?

8 A. I was working on a factoring agreement in order to
9 leverage my ownership rights and equity in Caring, therefore
10 being able to invest in China.

11 Q. Mr. Klein, putting aside for a moment the factoring
12 agreement, when, if ever, did you have discussions with the
13 Troutman firm regarding simply liquidating your interest and
14 investing in the China project yourself?

15 MR. STREMB: Your Honor, objection. Where was that
16 from?

17 THE COURT: I have to say, that question seems to me
18 to go beyond the boundaries of what's been the witness'
19 testimony. I'm going to encourage you to ask questions in the
20 nature -- questions seeking direct testimony and not to provide
21 information not previously set forth in the witness' testimony
22 and your answers. Will you rephrase that question, please?

23 Q. Did there come a point in time where you had discussions
24 with Troutman Sanders regarding how to invest monies in the
25 China project?

1 A. We discussed that in the beginning, in July. And in
2 August, we discussed it -- of how we would invest monies in
3 Caring -- I'm sorry -- in China where the money would be coming
4 from.

5 Q. And did you discuss with Troutman Sanders --

6 THE COURT: Excuse me for one second. I have to
7 confer with my deputy.

8 (Pause)

9 THE COURT: May we go briefly off the record?

10 (Off the record)

11 THE COURT: Mr. Krinsky, for the sake of the smooth
12 record, I'm going to ask you to restate your pending
13 question -- or state again, I should say, your pending
14 question.

15 Q. Did there come a point in time --

16 MR. KRINSKY: Withdrawn.

17 Q. During the period of the summer of '08 to December of '08,
18 did you have occasion to discuss with the Troutman Sanders firm
19 the possible financial investment vehicles for the China
20 project?

21 A. Yes. I discussed it with them in July. I discussed it
22 with them -- you know, basically, it was part of the discussion
23 every time we spoke, November, December, every time we spoke
24 about this.

25 Q. Let's go back for a moment. And specifically, what was

1 the financial investment vehicle that was discussed during
2 these conversations with Troutman Sanders?

3 A. There were a couple of financial investment vehicles. And
4 one of them was my personal monies that I had in Caring which I
5 needed to get out from Caring in order to invest in China.

6 Q. When you say get out of Caring, what do you mean?

7 A. It wasn't that simple. I needed to find a creative way to
8 do that. And so, I came up with this factoring -- idea of a
9 factoring agreement in order to leverage my equity in the
10 company.

11 Q. Again, without telling us specifically what was said, with
12 respect to the factoring agreement, what, if any, discussions
13 did you have with the Troutman Sanders firm regarding your
14 financial interest in Caring?

15 A. I discussed with them my ownership rights. I discussed
16 with them the money that I invested in the company. I
17 discussed with them my accrued profits at that time and what
18 it -- would be the potential profit at the time that we would
19 get to the point of closing the China deal. I discussed with
20 them issues that I had at that moment whereby I couldn't just
21 simply write a check from the company in order to invest in the
22 China project.

23 Q. Mr. Klein, with respect to this factoring agreement, did
24 the Troutman Sanders firm have any direct involvement in the
25 drafting or negotiating of this factoring agreement you refer

1 to?

2 A. No.

3 Q. Well, if they didn't have any direct involvement in
4 drafting or the negotiating of it, what was the nature then of
5 the discussions with the Troutman Sanders firm about the
6 factoring agreement?

7 A. They needed to know where monies were coming from. They
8 needed to know the time frame of any and all monies in order to
9 be able to, number one, I guess, structure the -- do the
10 corporate structure in order to work along with the financial
11 abilities and as well as they needed to know where it was
12 coming from because investment -- investing foreign funds as
13 well as repatriation of funds was an issue in a China company
14 structure.

15 Q. I'd like to focus a little bit more on that for a moment.
16 If you would please turn to the exhibit book to tab 124 -- in
17 the Klein exhibit book, 124.

18 (Pause)

19 Q. Mr. Klein, I'd like you to briefly look down at that
20 document, briefly look through it. And when you're done
21 flipping through it, please look up.

22 (Pause)

23 Q. When you're done flipping through it, if you would, just
24 look up just so we know you're ready.

25 (Pause)

1 A. Just the first page or all of it?

2 Q. When you're done flipping through the document, if you
3 would please look up.

4 (Pause)

5 Q. Mr. Klein, do you recognize that document?

6 A. Yes.

7 Q. How do you recognize that document?

8 A. That's one of the e-mails from -- which that was written
9 to me.

10 Q. Okay. And what do you recognize that document to be?

11 A. It's a letter from Mr. Wang on November 24.

12 Q. Okay. And Mr. Wang is, just so the record's clear?

13 A. From Troutman Sanders.

14 MR. KRINSKY: Your Honor, I offer into evidence what
15 was previously marked as Klein Exhibit 124 as identification as
16 Klein Exhibit 124.

17 MR. STREMB: No objection, Your Honor.

18 THE COURT: Without objection, it will be received in
19 evidence. The copy that I have is two-page e-mail -- excuse
20 me -- a three-page e-mail followed by the November 28th, 2008
21 seven-page letter, is that correct?

22 MR. KRINSKY: It is, Your Honor.

23 THE COURT: Thank you. Please proceed.

24 (Klein Exhibit 124, 3-page e-mail from Mr. Wang to Mr. Klein
25 dated 11/24/08, was hereby received into evidence as of this

1 date.)

2 Q. Mr. Klein, a moment ago, you had mentioned that you had
3 been discussing with the Troutman Sanders firm issues of
4 investing in China. Please take us through, if you would, this
5 e-mail very briefly noting to the Court where, if at all, those
6 discussions are reflected in this particular e-mail.

7 (Pause)

8 A. Something very specific? That's all -- it's all about
9 investing in China.

10 Q. Well, specifically, can you cite some examples for us
11 specifically where you're discussing GRV and the issues of
12 investing in China?

13 A. About -- paragraph 3, we're discussing the GRV and the
14 investment in China and how it worked for foreign investments.

15 Q. So, for example, referring to the paragraph that begins TS
16 about halfway down on the page, do you see that?

17 A. Yes.

18 Q. Okay. Specifically, referring your attention to line 4.
19 This document's already in evidence. Specifically, where it
20 begins to discuss, "The China law does not permit a guaranty
21 for the fixed return under a Sino-foreign investment
22 corporation." Did I read that correctly?

23 A. Correct.

24 THE COURT: Could you say again what paragraph you're
25 reading from?

1 MR. KRINSKY: This is under the paragraph that's
2 labeled "To". It is the paragraph that begins "TS" --

3 THE COURT: Yes. Okay.

4 MR. KRINSKY: Okay. Specifically, referring to the
5 fourth line down, approximately four words from the left of the
6 page, "The China law".

7 A. Yes, I see.

8 Q. Okay. In your discussions with the Troutman Sanders firm,
9 what, if anything, did you discuss with respect to difficulties
10 in China and investments?

11 A. There is different rules and regulations in the China law
12 which we were not very familiar with. And we were looking for
13 them -- for Troutman to advise us. And what we discussed in
14 general were that -- where the funds would be coming from,
15 through which vehicles we might be bringing the funds to this
16 project and how that would be able to be injected as foreign
17 currencies into this China project as well as being able to get
18 it back out in the same currencies.

19 Q. Let me refer your attention to the last sentence of that
20 same paragraph that begins "After obtaining more information".
21 Do you see that? Same paragraph that begins "TS:", very last
22 sentence, beginning "After obtaining more information". See
23 where I am? Okay. I'd like you to read that out loud for us.

24 A. "After obtaining more information about this project and
25 Mr. Zang's company, we will advise you whether there are any

1 possibilities to lawfully set up an effective guaranty
2 structure. And we are, of course, open to any suggestions from
3 Mr. Zang."

4 Q. In connection with this e-mail or other communications
5 that you had, did you discuss other possibilities with the
6 Troutman Sanders firm of how to structure a deal in China using
7 your monies?

8 (Pause)

9 A. I don't understand the question.

10 Q. Sure. During your discussions with the Troutman Sanders
11 firm, did you have a dialogue regarding the possible vehicles
12 to invest in China?

13 A. Yes.

14 Q. In addition to this e-mail, did you have other
15 communications with either Mr. Wang or Mr. Epstein regarding
16 those possible vehicles?

17 A. Yes, we did.

18 Q. And what was the form of those communications, for
19 example, in writing, verbally or otherwise?

20 A. Much -- a lot of it verbally.

21 Q. And those verbal communications, were they by telephone or
22 in person? What was the actual form of those conversations?

23 A. By telephone and in person.

24 THE COURT: Mr. Krinsky, in a general way, I will note
25 that your questions have included many components of potential

1 answers. It will help me more if the questions are more open-
2 ended in the nature of what happened next, what did you do,
3 things like that. It simply will give me a better record upon
4 which to assess the facts and also the witness' credibility.
5 But you -- the questions aren't objected and, of course, I'm
6 not objecting. I'm offering some general guidance. Please
7 continue. And I will say, in a general way, that applies to
8 any attorney questioning any witness who performs direct.

9 Q. In November 2008, take us through, if you would, the
10 discussions you had, generally, with the Troutman Sanders firm
11 regarding the investment in the China project.

12 A. There were -- in general, there was this China project
13 where company structures needed to be set up. The company
14 structure needed to be set up in a way that would work within
15 the realities of our existing financing as well as any
16 additional financing -- or additional funds as well as any
17 additional financing that we would have to raise one way or
18 another. One had an effect on the other. So that was a
19 continuous conversation of what funds we have, the timing of
20 the funds, where the funds are coming from. So as to be able
21 to build or set up the company structure in a way that would
22 fit those realities.

23 In addition to that, there were potential different
24 avenues or different vehicles through which we would be able to
25 potentially raise funds. And they -- those -- all of those

1 would have to fit into the same eventual corporate structure.

2 All that had to fit in within the China legal system which
3 has, I guess, a whole bunch of restrictions that had to be
4 taken into account.

5 All that had to be worked in within the letter of intent
6 that was basically the framework of something the real estate
7 developer would have to agree with and which would work within
8 the realities of what existed on my side.

9 Q. When you say into the realities of what existed on your
10 side, what specifically are you referring to?

11 A. Funding. A significant portion of the funding, roughly
12 thirty percent of it as I calculated at that time, would have
13 come from my investment in Caring. And there was an issue of
14 getting the money out as well as the timing of getting that
15 issue resolved. And that was an important and significant part
16 in this investment. Without that -- this whole potential China
17 deal, it's a possibility we wouldn't be able to pull it off.

18 Q. In connection with the Troutman Sanders firm representing
19 you, what, if any, discussions did you have with the Troutman
20 Sanders firm regarding specific investment vehicles?

21 A. I discussed with them that Flexo Craft was an investment
22 vehicle as well as my funds in Caring that we needed to get out
23 of Caring into a -- somehow into an intermediate vehicle in
24 order for us to -- so I should be able to leverage those funds
25 and be able to get money or a loan based on what I -- based on

1 the equity that I would leverage into this intermediary company
2 which was -- we tried to use GRV.

3 Q. Now, specifically, without telling us what you said and
4 what they said to you, what were the general categories of
5 information that you provided to Troutman Sanders and Troutman
6 Sanders asked you for with respect to Caring?

7 A. The general information was in reference to my ownership
8 rights, the issues that I was having of why I can't simply just
9 take the money out, the delay in the licensing which was part
10 of the issue, or the issue actually, my profits, my investments
11 in the company and even the point of how the money would accrue
12 or accrues and how it would get to a particular 2.2 million or
13 something at a particular point in time.

14 Q. You mentioned a moment ago GRV. During this period of
15 time that you were discussing, Caring and the China project
16 with the Troutman firm, what was the value of the company GRV?

17 A. GRV had no value.

18 Q. Mr. Klein, help us to understand. If GRV had no value,
19 how could GRV be used as an investment vehicle to invest in
20 China?

21 A. Without the factoring agreement, they wouldn't be able to.

22 Q. And the factoring agreement that you're referring to
23 specifically relates to what company and what ownership
24 interest?

25 A. The factoring agreement relates to my ownership interest

1 in Caring at that time.

2 Q. During what period of time were you engaged --

3 MR. KRINSKY: Withdrawn.

4 Q. You mentioned a moment ago that you were engaged in
5 negotiations over a factoring agreement. During what period of
6 time did those negotiations take place?

7 A. From the summer of '08 until about January '09, I think,
8 end of January '09, I believe.

9 Q. That had to do with the factoring agreement. Now during
10 what period of time was Troutman Sanders actively pursuing your
11 interests in connection with the China project that you
12 referred to?

13 A. Same time frame, from summer of '08 till end of December.

14 (Pause)

15 Q. To your knowledge, did Ms. Persaud know about the China
16 project that you were negotiating or working on during this
17 period of time?

18 A. Yes, she did. I told her about it.

19 Q. What did you say to her, generally, and what did she say
20 to you, generally?

21 A. In general, it was about negotiating with her in reference
22 to the factoring agreement that I wanted her to sign and
23 therefore be able to leverage my equity in Caring in order to
24 be able to use it for the China project. I basically told her
25 that I am looking to get a loan or line of credit based on my

1 equity in Caring. And therefore I would need to make a
2 factoring agreement in order to be able to do that.

3 Q. Were the discussions that you had with Ms. Persaud
4 regarding your ownership in Caring to be used for China, was
5 that the same information that you provided to Troutman Sanders
6 during confidential communications?

7 A. Pretty much the same.

8 MR. STREMB: Objection, Your Honor. I can't tell --

9 THE COURT: It's sustained. You can restate that
10 question. It contains a number of conclusions. I think if you
11 break it down, it will be more helpful.

12 MR. KRINSKY: Your Honor, may I have a moment to
13 confer with co-counsel?

14 THE COURT: If you're unable to restate the question,
15 I'll give you an opportunity to respond. It seemed to me a
16 situation best addressed by a restated question.

17 Q. You testified earlier regarding confidential information
18 that you provided to the Troutman Sanders firm. Do you recall
19 those questions?

20 A. Yes.

21 Q. Mr. Klein, as you sit here today, why is it that you don't
22 want the Troutman Sanders firm representing the trustee?

23 A. During the Troutman Sanders representation and me working
24 with them, I gave them a lot of information, a lot of
25 confidential information in relation to my dealings, my

1 finance, my thinking. Essentially, I gave them a roadmap to
2 everything about my finances specifically related to Caring.
3 If they would be allowed to represent the trustee, they would
4 be able to use that information to help the trustee try to take
5 away my rights or ownership rights in Caring. I don't think
6 that's right.

7 MR. KRINSKY: I have no further questions.

8 THE COURT: Thank you. You may inquire.

9 CROSS-EXAMINATION

10 BY MR. STREMB:

11 Q. Mr. Klein, did you ever provide to Troutman Sanders a
12 personal balance sheet?

13 A. No.

14 Q. Did you ever provide Troutman Sanders with a personal
15 income statement or other financial statement?

16 A. No.

17 Q. Did you ever provide Troutman Sanders with any personal
18 tax returns?

19 A. No.

20 Q. Did you ever provide Troutman Sanders with any personal
21 bank statements, brokerage statements or credit card
22 statements?

23 A. No.

24 Q. Did you ever provide Troutman Sanders with any balance
25 sheet for Caring Home Care Agency?

1 A. No.

2 Q. Did you ever provide Troutman Sanders with any income
3 statements or other financial statements of Caring?

4 A. No.

5 Q. Any tax returns of Caring?

6 A. No.

7 Q. Any bank statements, brokerage statements, credit card
8 statements of Caring?

9 A. No.

10 Q. Any accounting records of Caring?

11 A. No.

12 Q. Any contracts to which Caring was a party?

13 A. No.

14 Q. Did you provide Troutman with any list of transfers that
15 were made by Caring to any other party?

16 A. Did you provide any documentation of any transfers made by
17 Caring to any other party?

18 A. No.

19 Q. Did you provide Troutman Sanders with copies of any
20 proposed contracts between Caring and any other party?

21 A. No.

22 Q. Specifically, did you provide Troutman Sanders with a copy
23 of any proposed factoring agreement with Caring?

24 A. I don't believe so.

25 Q. Did you provide Troutman Sanders with any documentation of

1 the ownership of Caring?

2 A. No.

3 Q. Did you provide Troutman Sanders with any balance sheet
4 for Trade Fame Group Ltd.?

5 A. No.

6 Q. Did you provide any income statement or other financial
7 statements of Trade Fame Group?

8 A. No.

9 Q. Any tax returns of Trade Fame Group?

10 A. No.

11 Q. Any bank statements, brokerage statements, credit card
12 statements?

13 A. No.

14 Q. Any accounting records?

15 A. No.

16 Q. Any contracts to which Trade Fame Group was a party?

17 A. No.

18 Q. Any lists of transfers made by Trade Fame Group to any
19 other party?

20 A. No.

21 Q. Documentation of any transfers made to Trade Fame Group by
22 any other party?

23 A. No.

24 Q. Any proposed contracts between Trade Fame Group and any
25 other party?

1 A. Documentation?

2 Q. Yes.

3 A. No.

4 Q. Mr. Klein, did you ever ask Troutman Sanders to assist you
5 in obtaining financing for the China project?

6 A. Yes.

7 Q. And how -- what did you ask them to do?

8 A. We explained to them our financial position and they
9 offered that they do financing related Venture Capital raising
10 funds and that they might be able to help us in that regard.

11 MR. STREMB: I move to strike the answer.

12 Q. Mr. Klein, what did you ask Troutman Sanders to do in
13 connection with obtaining financing?

14 THE COURT: There's no jury. I'm going to let the
15 answer stand. You can follow up.

16 Q. Specifically, Mr. Klein, what services did you ask
17 Troutman Sanders to render in connection with obtaining
18 financing for the China project?

19 A. They actually offered us that they would be able to --

20 Q. Mr. Klein --

21 A. Yes?

22 Q. What did you ask Troutman Sanders to do?

23 A. Based on our existing financing, if they would be able to
24 raise capital in order to essentially fill in the gap if there
25 would be, in fact, a gap.

1 Q. Did you ask Troutman Sanders to review any draft contracts
2 between Caring and any other party?

3 A. No.

4 Q. Did you ask Troutman to communicate on your behalf with
5 anyone with respect -- I'm sorry -- with anyone on behalf of
6 Caring?

7 A. No.

8 Q. You indicated that you were having discussions during the
9 summer and into -- through December with Caring with regard to
10 a possible factoring agreement, correct?

11 A. Correct.

12 Q. With whom were you communicating with regard to the
13 possible factoring agreement?

14 A. On my side or --

15 Q. Yeah --

16 A. -- or the Troutman side?

17 Q. No. Not with Troutman. With whom on behalf of Caring
18 were you communicating?

19 A. Christine Persaud.

20 Q. Were you also having communications with an attorney
21 representing Caring?

22 A. Yes.

23 Q. And who was that?

24 A. Sam Reiff.

25 Q. And did you ask Troutman to speak to Mr. Reiff on your

1 behalf with respect to a factoring agreement?

2 A. No.

3 Q. Were you represented by any counsel in connection with
4 your proposed factoring agreement?

5 A. The factoring agreement was drafted by counsel, yes.

6 Q. And which counsel was that?

7 A. Paul Salazar among others.

8 Q. Among what others?

9 A. There was multiple drafts. We had to make sure the
10 factoring agreement would work within the DOH regulations.

11 Q. So what attorneys other than Mr. Salazar participated in
12 that drafting?

13 A. I think it was Tenzer.

14 Q. The Tenzer firm?

15 A. Yeah.

16 Q. Any others?

17 A. Don't remember.

18 Q. Mr. Klein, to your knowledge, has there ever been an
19 e-mail communication between you and your brother, on one hand,
20 and Troutman, on the other, that refers to Caring?

21 A. I don't think so.

22 Q. Are you aware of any e-mail communication between you and
23 your brother, on one hand, and Troutman, on the other hand,
24 that refers to Trade Fame Group?

25 A. No.

1 Q. Are you aware of any e-mail communication between you or
2 your brother and Troutman that refers to any contract or
3 proposed contract between Caring and any other party?

4 A. No.

5 Q. Are you aware of any e-mail communication between you or
6 your brother and Troutman that refers to any transfer made by
7 Caring to Trade Fame Group?

8 A. No.

9 Q. Are you aware of any e-mail communication between you or
10 your brother and Troutman that refers to Christine Persaud?

11 A. I don't think so.

12 Q. Mr. Klein, I'd like to direct your attention to Troutman
13 Exhibit A which is a copy of the engagement letter. It's in
14 the binder that I provided. You can look at it either now or
15 as I ask questions. I just have a few questions about it.

16 First, is there any reference in the engagement letter to
17 Caring?

18 A. No.

19 Q. Is there any reference in the engagement letter to Trade
20 Fame Group?

21 A. No.

22 Q. Is there any reference to any contract or proposed
23 contract between Caring and any other party?

24 A. No.

25 Q. Is there any reference to Christine Persaud in the

1 engagement letter?

2 A. No.

3 Q. Is there any reference in that engagement letter to
4 providing services relating to obtaining financing for the
5 China project?

6 (Pause)

7 A. No.

8 Q. To your knowledge, did you or your brother ever ask
9 Troutman Sanders to add something to its engagement letter that
10 would cover potential financings for the China project?

11 A. I don't believe so.

12 Q. Mr. Klein, I'm going to refer you to an affidavit that you
13 submitted in connection with your objection. It's Trustee
14 Exhibit O in the binder. First, Mr. Klein, can you confirm
15 that you signed this affidavit on the last page?

16 A. Yeah. It's my signature.

17 Q. Mr. Klein, I'd like to refer you now to paragraph 38 of
18 your affidavit. I don't think the pages are numbered but it is
19 paragraph 38. This paragraph reads: "It is clear that my
20 expectation was that the Troutman firm continue to represent us
21 in the ongoing matter of the China project and that, if
22 anything, as of December 2008, the China project was picking up
23 momentum as evidenced by the Troutman firm's very words and
24 actions that the Troutman firm believed that it was important
25 at that precise point in time, December 2008, to have the

1 retention agreement executed."

2 Now, Mr. Klein, as you sit here today under oath, do you
3 believe that the China project was picking up momentum as of
4 the end of December 2008?

5 MR. KRINSKY: Objection. Form. Improper impeachment.
6 There's been no inconsistency and the witness hasn't said he
7 doesn't remember.

8 MR. STREMB: I'm asking him --

9 THE COURT: Overruled. It's cross-examination. This
10 is the witness' statement under affirmation. I think it's an
11 appropriate question. You had a wide berth on direct. I think
12 a wide berth is appropriate.

13 MR. KRINSKY: Is the document in evidence?

14 MR. STREMB: It isn't now but if you'd like it to
15 be --

16 THE COURT: It is an affidavit that you filed in the
17 case. Do you object to its use?

18 MR. KRINSKY: No. In fact, I would then ask that it
19 be offered into evidence and therefore be part of the record as
20 opposed to simply a pleading.

21 MR. STREMB: Your Honor, that's fine with me. We
22 move the --

23 THE COURT: It's admitted. Without objection, it will
24 be admitted.

25 (Trustee's Exhibit O, affidavit of Abraham Klein, was hereby

1 received into evidence as of this date.)

2 A. Yes. It was picked up momentum.

3 Q. And how can you say that it was picking up momentum at the
4 end of December 2008?

5 A. I'm told -- we were told that the developers are putting
6 it on hold for a while due to the economic turmoil worldwide.
7 It was picking up momentum.

8 Q. The developer indicated that he was putting the project on
9 hold on December 31, 2008, isn't that correct?

10 A. Correct.

11 Q. And so, as of the end of December 2008, in your view, was
12 the project picking up momentum?

13 A. I'm told -- we were told that it wasn't.

14 Q. But as of December 31, 2008, it was no longer picking up
15 momentum? Is that your testimony now?

16 A. As of December 31 when the Troutman Sanders firm told us
17 that the developer has put it on hold, that's when we were
18 notified that it was no longer picking up momentum, that is
19 correct.

20 Q. So in your affidavit, in paragraph 38, when you say that
21 the project was picking up momentum, you're referring to the
22 period before December 31, 2008?

23 A. It was the end of December, correct.

24 Q. And not to the period since?

25 A. Not since that time, correct.

1 Q. Has the China project ever proceeded?

2 A. No.

3 (Pause)

4 Q. Mr. Klein, I'd like to refer you next to an affidavit,
5 another affidavit that you submitted in this matter. It's
6 Trustee Exhibit N in the binder. This is an affidavit dated
7 August 15, 2011. I'd like you to look at the last page and
8 confirm, if you can, that you signed this affidavit?

9 A. Yes.

10 MR. STREMB: I'd like to move this exhibit into
11 evidence, Your Honor.

12 THE COURT: Any objection?

13 MR. KRINSKY: No objection.

14 THE COURT: Without objection it will be received.
15 (Trustee's Exhibit N, affidavit of Mr. Klein dated August 15,
16 2011, was hereby received into evidence as of this date.)

17 Q. Mr. Klein, please look at paragraph 7 of your affidavit,
18 which reads, quote, "While the actual work on the China project
19 has been temporarily suspended because of the economic
20 downturn, etcetera, the representation by Troutman Sanders LLP
21 is still ongoing". Mr. Klein, as you sit here today under
22 oath, would you say that the China project has been temporarily
23 suspended?

24 A. I would still say so, yes.

25 Q. How many years would it take you to say that the project

1 was no longer temporarily suspended?

2 MR. KRINSKY: Objection. Argumentative.

3 THE COURT: Overruled.

4 A. The project still exists. The economy didn't turn much
5 around, and would the right time come for the project to be a
6 viable project it would still exist.

7 Q. Mr. Klein, since December, 2008 have you made any attempt
8 to keep up with developments regarding the Chinese economy?

9 A. Just as much as it pertains to me in my general business.

10 Q. And how do you keep up with the Chinese economy?

11 A. Just from the information that I get in general business,
12 which I do with China on a daily basis.

13 Q. Would that include regularly reading any newspapers like
14 The Wall Street Journal?

15 A. No.

16 Q. Do regularly read The New York Times business section?

17 A. No.

18 Q. Have you --

19 MR. STREMB: Strike that. Withdrawn.

20 Q. What is your general understanding of how the Chinese
21 economy has been fairing since December, 2008?

22 A. From the information that I have it -- I guess it had ups
23 and downs but better than the U.S. economy to a degree is the
24 best of my information.

25 Q. Is anybody --

1 MR. STREMB: Withdrawn.

2 Q. Have you ever read or heard reports that the Chinese
3 economy has been in a boom state during the last few years?

4 A. Can't say that I did.

5 Q. Have you ever read or heard reports that real estate
6 prices have risen so much in the last few years that there is a
7 potential real estate bubble in China?

8 A. In certain areas I did hear about that, yes.

9 Q. Do you believe that there is still a temporary --

10 MR. STREMB: Withdrawn.

11 Q. Do you believe that there is still an economic downturn in
12 China?

13 A. There is definitely an economic downturn worldwide, and
14 this is, really, why this project was put on hold as of
15 uncertainty, because it had a certain window of sell through,
16 and if that window of sell through wouldn't be met that would
17 mean additional investment in the project and, therefore, from
18 the developer's perspective, and I wasn't making the decisions,
19 from the developer's perspective he felt that it's a risk of
20 this project going out of that twenty-four month or so window.

21 Q. Well, that twenty-four month window has now passed, right?

22 A. No, it's a twenty-four month window from when this -- the
23 project actually starts until it's completed.

24 Q. So during the last three years have you looked at any
25 other potential investments in China?

1 MR. KRINSKY: Objection. Relevance.

2 THE COURT: Well, you've -- it seems to me in your
3 examination you asked a number of questions that go to the
4 bigger picture of Mr. Klein's investment interests. I don't
5 think a long inquiry in this is likely to be productive, but
6 I'm going to overrule the objection for now. I think the
7 door's been opened. You may inquire.

8 A. Can you repeat the question again, please?

9 Q. During the last three years have you considered investing
10 in any other project in China?

11 A. No real estate projects, no.

12 Q. Has the developer of the China project proceeded with the
13 project to any extent?

14 A. Not with that project.

15 Q. I'd like to direct your attention now to paragraph 11(c)
16 of the same affidavit. This paragraph states, quote, "As my
17 interests in China intersected with my interests in Caring Home
18 Care in the attempt to arrange for financing, and Christine
19 Persaud raised certain allegations, which I deny, it is
20 reasonable to assume that there is a possibility that Troutman
21 Sanders LLP will, on behalf of the Chapter 7 Trustee,
22 investigate and/or litigate matters, the very same matters for
23 which I have retained them to represent me."

24 Mr. Klein, in that paragraph where you refer to the
25 attempt to arrange for financing, are you referring to the

1 proposed factoring agreement that you testified to earlier?

2 A. It's in reference to all the information that I gave the
3 Troutman Sanders firm in reference to my interest in Caring and
4 my financing in Caring and the -- and my interest and ownership
5 rights and everything that I told them about it.

6 Q. And the reference to the certain allegations made by
7 Christine Persaud, what allegations are you referring to there?

8 A. She made a whole bunch of allegations.

9 Q. Which ones are you referring to here? "Certain
10 allegations". Are you referring to the allegation that there
11 were improper transfers made between Caring and Trade Fame
12 Group?

13 A. That could be one of them.

14 Q. What other ones could there be?

15 A. Any and all allegations that she would have made.

16 Q. Are you saying you don't remember any others?

17 A. I can't recall in detail all of them, no.

18 Q. Did you refer to any other allegations in your affidavit
19 or in the other affidavit that we looked at?

20 A. I wouldn't recall. I can read it.

21 THE COURT: It would be helpful to you to take a
22 moment to read your affidavit you should do so.

23 (Pause)

24 A. I've read it. What was the question again?

25 Q. Well, the question is when you referred to certain

1 allegations in paragraph 11(c) of your affidavit weren't you
2 referring to the allegation that there were improper transfers
3 made by Caring to Trade Fame Group, Ltd.?

4 A. I guess that would be one of the allegations or in this --
5 in --

6 Q. What were the other allegations that you were referring
7 to?

8 MR. STREMB: Withdrawn.

9 Q. Let me refer you back to paragraph 9 of this same
10 affidavit, Exhibit N, in which you refer to an affidavit of
11 Christine Persaud. In that paragraph you refer to allegations
12 that Ms. Persaud made. Is there any allegation referred to
13 there other than improper transfers made by Caring to Trade
14 Fame Group?

15 A. No.

16 Q. And looking up at paragraph 8 where you reference your
17 approach to Christine Persaud to obtain an agreement, quote,
18 "to allow me to attempt to secure favorable financing", is that
19 the agreement that you were referring to in paragraph 11(c)
20 when you talk about the attempt to arrange for financing?

21 A. Yes.

22 Q. Now, Mr. Klein, you've testified that you did not engage
23 Troutman Sanders to represent you in connection with the
24 factoring agreement and you've testified that you did not
25 engage Troutman Sanders with respect to any transfers between

1 Caring and Trade Fame Group. I ask you, therefore, as you sit
2 here today under oath, how you can reconcile that with your
3 statement that these are the very same matters for which I have
4 retained them to represent me?

5 A. I retained Troutman Sanders for my China project. In
6 conjunction with the China project I have disclosed to Troutman
7 Sanders all this information relating to Caring Home Care, my
8 financing in Caring Home Care, the need to transfer funds out
9 of Caring Home Care, and different ways of how -- greater ways
10 of how I was thinking of getting it done. All that was in
11 relation to the China project, and that is exactly what I --
12 that is what I hired the Troutman Sanders for -- firm was for
13 the China project, and which I disclosed all that information
14 to them.

15 (Pause)

16 MR. STREMB: Your Honor, may I just take two minutes
17 to look at my notes?

18 THE COURT: Yes, you may.

19 (Off the record)

20 MR. STREMB: Your Honor, no more questions.

21 THE COURT: All right. Redirect?

22 MR. KRINSKY: Yes, Your Honor.

23 (Pause)

24 THE COURT: Please proceed. We understand some of the
25 other attorneys may be attending at some point. I'm just

1 trying to be sure we now have the most current information.

2 Please proceed.

3 REDIRECT EXAMINATION

4 BY MR. KRINSKY:

5 Q. Opposing counsel asked you a number of questions regarding
6 documents and whether or not you turned over certain documents
7 to the Troutman Sanders firm in connection with certain
8 business entities. Do you remember those questions?

9 A. Yes.

10 Q. When, if at all, did you turn over stock certificates for
11 GRV to the Troutman Sanders firm?

12 A. Never did.

13 Q. When, if at all, did you turn over tax returns for GRV to
14 the Troutman Sanders firm?

15 A. I didn't.

16 Q. When, if at all, did you turn over accounting documents
17 relating to GRV to the Troutman Sanders firm?

18 A. I didn't.

19 Q. When, if at all, did you turn over profit and loss
20 statements of GRV to the Troutman Sanders firm?

21 A. I didn't.

22 Q. When, if at all, did you turn over cash flow statements
23 relating to GRV to the Troutman Sanders firm?

24 A. I didn't.

25 Q. When, if at all, did you turn over ownership certificates

1 or documents relating to GRV to the Troutman Sanders firm?

2 A. I didn't.

3 Q. When, if at all, did you turn over balance sheets or
4 income statements regarding GRV to the Troutman Sanders firm?

5 A. I didn't.

6 Q. Referring your attention specifically to the tab that is
7 marked Exhibit 8 or 8 in your binder, in the large binder,
8 please. I'm going to ask you to turn to that tab and then
9 please look up.

10 THE COURT: I'm sorry. Which tab?

11 MR. KRINSKY: Tab number 8.

12 THE COURT: Eight.

13 (Pause)

14 Q. Mr. Klein, do you recognize that document?

15 A. Yes, I do.

16 Q. How do you recognize that document?

17 A. I recognize that from my e-mail.

18 Q. And what is that document?

19 A. That's the document that gives the outline of the China
20 real estate project development.

21 Q. And you said that was -- I think you said that was your e-
22 mail.

23 A. No. I recognize it from my e-mail.

24 Q. Okay.

25 MR. KRINSKY: I offer into evidence what was

1 previously marked as Klein Exhibit 8 for identification as
2 Klein Exhibit 8.

3 MR. STREMB: No objection, Your Honor.

4 THE COURT: Without objection the document marked as
5 Exhibit 8, which appears to be a one-page e-mail, followed by a
6 page labeled attachment 1, followed by a page unaccompanied by
7 a translation and a several page document in Chinese, and
8 concluding with a spreadsheet in English. Is this the
9 document?

10 MR. KRINSKY: It is, Your Honor.

11 THE COURT: In order to make any sense of this
12 document of course I'll need to have a certified translation of
13 the portion in Chinese.

14 MR. KRINSKY: Of course. And, Your Honor, to the
15 extent that we're not going to be referring to that document I
16 can, for the Court's ease and for moving us along, I can offer
17 to remove that portion of the Chinese document, because we're
18 not going to be referring it, so rather than -- avoid expense
19 and time and effort in going through having that translation,
20 with Your Honor's permission I would offer to reoffer this
21 document simply referring to, or including within it, the first
22 page of the e-mail and the last page, which is the Excel
23 spreadsheet.

24 THE COURT: The document begins "Please see attached
25 docs". The document is directed to an individual you've

1 indicated in your argument and in your affirmation plays a
2 significant role.

3 MR. KRINSKY: Very well.

4 THE COURT: I'm concerned that accepting an incomplete
5 document may be a problem. At the same time I'm going to rely
6 on the adversary process, if there's no objection, to receiving
7 what I'll call Exhibit 8 --

8 MR. STREMB: Your Honor, I don't object to
9 receiving --

10 THE COURT: -- 8-A as an incomplete document. We can
11 proceed that way.

12 MR. KRINSKY: Your Honor, if that's the case then if
13 Your Honor will keep open the record I will have a certified
14 translation provided to the Court.

15 THE COURT: At the moment I'm going to take the
16 proffer as the document before me. I cannot admit that which
17 is not before me, so any objection to receiving a document
18 within the framework described?

19 MR. STREMB: No Your Honor.

20 THE COURT: All right. I'll mark --

21 MR. STREMB: As a complete document, no.

22 THE COURT: I'll mark it as admitted as reflected in
23 the record. It's an incomplete document including a several
24 page attachment in Chinese. Thank you. Please proceed.
25 (Klein's Exhibit 8-A, e-mail outlining China real estate

1 project development with several attachments, was hereby
2 received into evidence as of this date.)

3 BY MR. KRINSKY:

4 Q. Referring specifically to the last page of the document,
5 which appears to be an Excel spreadsheet, Mr. Klein, does this
6 Excel spreadsheet indicate what your role is going to be in the
7 China project in terms of investing?

8 A. I -- I was going to be a forty percent partner in the
9 joint venture.

10 Q. Where, specifically, please identify through record
11 specifically where in this document it indicates that you'd be
12 a forty percent investor.

13 A. Somewhere down in the middle of the document, like, the
14 third group of cells.

15 Q. Okay. You're referring to the center of the page, third
16 box from the top?

17 A. Correct.

18 Q. Okay. And, specifically, what does that say, because,
19 again, you have the document. We need the record to accurately
20 reflect what you're referring to.

21 A. It explains the split on the joint venture, sixty percent
22 Zhang, forty percent Klein, joint venture, and then it further
23 breaks down of how the approximate money investment from Zhang
24 and Klein, sixty percent, forty percent, as well as the income
25 on the investment as sixty percent Zhang and forty percent

1 Klein.

2 Q. Mr. Klein, did you ever have subsequent conversations with
3 the Troutman Sanders firm regarding your forty percent
4 investment in the China project?

5 A. Yes.

6 Q. Specifically, did you discussions with the Troutman firm
7 regarding where that forty percent interest would come from?

8 MR. STREMBBA: Your Honor, this has been asked and
9 answered about ten times.

10 MR. KRINSKY: Ask for a small amount of latitude, and
11 I think, Your Honor, very quickly I'm going to get to where I'm
12 going right now.

13 THE COURT: You may proceed.

14 Q. At the point in time that this spreadsheet was sent to the
15 Troutman Sanders firm --

16 THE COURT: May I pose a clarifying question? Did you
17 send this e-mail?

18 THE WITNESS: This e-mail was sent by my brother.

19 THE COURT: You may continue.

20 MR. KRINSKY: Let me rephrase.

21 Q.

22 . At the point in time that this document was sent by
23 Hershel Klein in what capacity was Hershel Klein sending the
24 document?

24 A. He was acting on my behalf.

25 Q. And at the point in time that this document was

1 transmitted to the Troutman Sanders firm were there any
2 discussions, at this time point in time, regarding GRV?

3 A. No.

4 Q. So let's talk, then, about your specific investment of
5 forty percent. Your specific investment of forty percent. At
6 the time that this document was transmitted to Troutman
7 Sanders, or thereafter, did you ever provide your individual
8 tax returns to Troutman Sanders?

9 A. No.

10 Q. Did you ever provide your individual profit and loss
11 statements for your own --

12 A. No.

13 Q. -- individual income to Troutman Sanders?

14 A. No.

15 Q. Did you ever provide a personal cash flow statement to
16 Troutman Sanders for your own individual finances?

17 A. No.

18 Q. Did you ever provide any sort of balance sheet for your
19 personal finances to Troutman Sanders?

20 A. No.

21 Q. Did you ever provide any personal income statements to
22 Troutman Sanders?

23 A. No.

24 Q. There were certain questions asked of you with respect to
25 the ongoing nature of the China project. To your knowledge,

1 after January of '09, to your knowledge, were there any
2 restrictions placed on the real estate market going forward
3 with respect to investments?

4 A. Yeah, there was a change. There is a -- there was a
5 change in the China law to a degree of before that time people,
6 a lot of the real estate was built for inventory. People just
7 bought it, flipped it, and that's, really, what was driving a
8 lot of the prices up, and due to some, I guess, market
9 overheating and the government trying to take some precautions
10 of -- for it not to overheat they changed the laws whereby
11 somebody buying real estate, they would have to hold on to it
12 for a certain period of time whereby it would become a -- the
13 attraction of buying just to flip became less.

14 Q. Going back for a moment, Mr. Stremba asked you a series of
15 questions regarding what, if any, advice you received from the
16 Troutman Sanders firm regarding the financing of this deal. Do
17 you recall those questions?

18 A. Yes.

19 MR. STREMB: That's not what I asked him, Your Honor.

20 MR. KRINSKY: He --

21 THE COURT REPORTER: Excuse me. You have to talk
22 closer to the mic.

23 THE COURT: And it's a good idea to stand up. It
24 helps me see who's here and that is the practice here.

25 MR. STREMB: Your Honor, the questions and answers

1 concerned what Mr. Klein asked Troutman Sanders to do. This is
2 going beyond the scope of all of the examination.

3 THE COURT: You know this is redirect, generally
4 confined to the scope of the cross. To the extent that it's
5 appropriate to bring up a new document, for example, I'm giving
6 you some leeway there, but I remind you that it is not
7 necessary to repeat questions that were put to the witness in
8 cross --

9 MR. KRINSKY: Right.

10 THE COURT: -- as, I think, perhaps, maybe you did in
11 your last series of questions, though the record will speak for
12 itself, and there was no objection. I also note for the record
13 that the record will speak for itself as to what the questions
14 and answers were. We don't yet have the benefit of the
15 transcript. We shall have one shortly. In all events, I urge
16 you to be as productive as possible. I am determined to finish
17 this testimony this morning and can give this another fifty
18 minutes or so, but that is the timeframe I have, and, Mr.
19 Klein, it is my greatest -- I mean, in presiding over this
20 hearing this morning one of my many goals is that you shall be
21 able to complete your testimony. I'm sure that's in the
22 lawyers' interests as well as yours, and even the Court's, to
23 have this testimony be concluded today. You may continue.

24 BY MR. KRINSKY:

25 Q. Mr. Stremba asked you certain questions regarding certain

1 allegations made by Ms. Persaud against you. Do you recall
2 those questions?

3 A. Yes.

4 Q. Mr. Klein, are you aware that Ms. Persaud says that her
5 dispute with you began when you approached her in October of
6 2008 for a seven million dollar line of credit through Caring
7 Home Care to finance expansion of a business you said you were
8 operating in China?

9 A. Yes, I'm aware.

10 Q. With respect to those allegations and those statements
11 what, specifically, to your knowledge, was Ms. Persaud
12 referring to when she said the dispute arose regarding a line
13 of credit through Caring Home Care with respect to the
14 expansion of a China business?

15 A. She was talking about the factoring agreement and the
16 project in China, the real estate development project in China.

17 Q. Is this the same financing structured vehicle that you
18 spoke with and confided with in the Troutman Sanders firm?

19 MR. STREMB: Objection, Your Honor. It's a leading
20 question.

21 MR. KRINSKY: Your Honor, may I respond?

22 THE COURT: Yes, you may.

23 MR. KRINSKY: Technically it's not. A leading
24 question would be isn't it true or it actually presupposes the
25 answer built into it. If it's a yes or no that wouldn't make

1 it leading in and of itself.

2 MR. STREMBBA: This one is, Your Honor.

3 MR. KRINSKY: I can rephrase, Your Honor.

4 THE COURT: I'm going -- perhaps you can rephrase it
5 in a general way. I will not sustain the objection, although
6 you are going to rephrase the question and that may address
7 some of the concerns. I'll remind all of the parties, as I
8 have from time to time, that substance contained in a lawyer's
9 question is much less helpful to the Court as finder of fact
10 than substance contained in a witness's answer. And, so, when
11 a series of questions elicits answers in the nature of yes or
12 yes or no or no when we are on direct of any witness it is
13 simply less helpful and may well be less persuasive to me as
14 finder of fact. But I'll do my best to rule on the objections
15 as they come up. To the extent that there's a way to move this
16 forward in the most productive way I may offer guidance from
17 time to time, but it is absolutely the lawyer's job and not
18 mine to decide how this record is presented to the Court. All
19 right. You can --

20 BY MR. KRINSKY:

21 Q. Mr. Klein --

22 THE COURT: -- restate or revise the question as you
23 see fit. I've overruled the objection.

24 Q. Mr. Klein, with respect to Ms. Persaud's allegations
25 against you, how, if, at all, are those allegations related to

1 the legal advice that you were receiving from Troutman Sanders
2 in connection with the China project?

3 A. The allegations that Christine Persaud is making is in
4 reference to the precise information that I provided to
5 Troutman Sanders in relation to financing of the China project.
6 That's -- in order to structure the China deal that was
7 important information that they needed to know, whether we
8 would be able to pull this thing off, and, if we would, how it
9 will happen. So that was a lot of confidential information
10 that they got, and that is directly related to the issue at
11 Caring and what Christine is accusing me of.

12 Q. And the --

13 THE COURT: Mr. Klein, you've just indicated that the
14 information you have in mind is the, quote -- or this is more
15 or less a quote. My notes may be inaccurate. The record will
16 speak for itself --is the precise information that I provided
17 to Troutman Sanders in connection with the China project. Now,
18 you've been shown a number of documents and your counsel has
19 presented over 120 exhibits. I'd like you to indicate to me
20 any document that you've been shown, and you may take the time
21 you need, that includes the precise information, your phrase,
22 that you provided to Troutman Sanders in connection with the
23 China project that was of this financial and confidential
24 nature. Are you aware of any documents, including printouts of
25 e-mails, including the electronic documents, that set forth

1 such information? If you're not, that's fine. If you are, I'd
2 like you to tell me with specificity where they are.

3 THE WITNESS: A lot of information was on -- done
4 verbally on phone calls.

5 THE COURT: So no documents that you can describe or
6 point to presently, and I note that there is before you the
7 binder approximately six inches thick, of the 120 plus exhibits
8 that have been identified in this hearing over many weeks now
9 by your counsel. Any documents? That was my question. Next
10 I'll give you an opportunity to indicate with respect to
11 verbal, but let's stay on documents for the moment.

12 THE WITNESS: It's not in the documents.

13 THE COURT: All right. You can't identify a single
14 document in which what you've described as the precise
15 information was provided. Let's turn to the verbal --

16 THE WITNESS: Not --

17 THE COURT: -- communications that you've just
18 referenced. Can you tell me when the first one was?

19 THE WITNESS: In July.

20 THE COURT: Who was involved?

21 THE WITNESS: Aurora Cassirer and Edward Epstein.

22 THE COURT: And yourself?

23 THE WITNESS: And myself.

24 THE COURT: Was it on --

25 THE WITNESS: And Hershel.

1 THE COURT: Was it on the telephone?

2 THE WITNESS: Yes.

3 THE COURT: Are you certain?

4 THE WITNESS: Yes.

5 THE COURT: Do you recall it or do you reconstruct it
6 to be done?

7 THE WITNESS: I believe it was done and I recall.

8 THE COURT: What did you say?

9 THE WITNESS: The question was --

10 THE COURT: Let me rephrase that.

11 THE WITNESS: -- what --

12 THE COURT: What was the precise information of a
13 financial nature that you provided to Troutman Sanders in
14 connection with the China project?

15 THE WITNESS: The information was of my holdings or my
16 money in Caring and the raising of funds through Flexo Craft.

17 THE COURT: I'm looking for the precise information.
18 Was that as precise as it was what you just said?

19 THE WITNESS: The exact words?

20 THE COURT: The information.

21 THE WITNESS: The information wasn't written.

22 THE COURT: You described two topics, it seems to me.
23 I'm looking for the precise information that you provided to
24 Troutman Sanders in connection with the China project.

25 THE WITNESS: Information was in relation to my money

1 at Caring, my partnership rights in Caring and what it would
2 take or the possibilities of what it would take to get the
3 money out of Caring.

4 THE COURT: What did you say with respect to your
5 money at Caring?

6 THE WITNESS: That I have -- how much money I invested
7 in there, approximately how much, approximate --

8 THE COURT: Do you remember what you said?

9 THE WITNESS: Not word for word.

10 THE COURT: Do you remember what you said? Not the
11 subject but the, and you can answer this question yes or no and
12 we'll consider whether we can go beyond that, but do you recall
13 what you said in this conversation. Let me step back. When in
14 July?

15 THE WITNESS: July 30. July 30th, I believe. Or July
16 31st.

17 THE COURT: Do you recall that it was on July 30th or
18 are you speculating or reconstructing that it was on July 30th?

19 THE WITNESS: It was on a phone call on July 30th.

20 THE COURT: All right. Tell me everything you recall
21 about that phone call.

22 MR. KRINSKY: Your Honor, I'm going to object at this
23 point. Other than the general information, if you were going
24 to ask the witness about specific information that was revealed
25 than I ask, as law, the Second Circuit in this court requires

1 that it be done in camera ex parte.

2 THE COURT: I'm not going to take testimony.

3 MR. KRINSKY: Otherwise it defeats the very purpose.

4 THE COURT: All right.

5 MR. KRINSKY: He cannot --

6 THE COURT: Well, I will -- your counsel's asked me no
7 longer to inquire. I shall stop at this point. Your answers
8 have been helpful to me, and I thank you for them. You may
9 proceed.

10 Do you have any further questions on redirect?

11 MR. KRINSKY: I have no further questions.

12 THE COURT: Recross, please.

13 MR. STREMB: Just about two questions, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. STREMB:

16 Q. On this spreadsheet that you were looking at in the
17 exhibit that was just marked, Exhibit 8, in the box that you
18 were looking at there's an indication, I think, that the
19 investment that would be required by you would be approximately
20 5.8 million dollars. Is that correct?

21 A. Correct.

22 Q. Is there any indication on this sheet as to where those
23 funds would be acquired?

24 A. No.

25 MR. STREMB: Thank you. I have no more, Your Honor.

1 THE COURT: All right. Mr. Klein, any further
2 questions from any counsel? Would you like a moment to confer
3 with your colleagues? I'll give you that moment. We are
4 complete through recross, so it may well be that there should
5 be no further questions, but if you wish to make an application
6 further to inquire I'll hear you.

7 MR. KRINSKY: No, Your Honor.

8 THE COURT: All right. Thank you. Mr. Klein, I
9 believe that your examination is complete. I thank you for
10 your time and your patience and, in particular, with the number
11 of days it's taken us to make this record and also with the
12 questions of counsel and the Court.

13 All right. We're going to take a very short recess
14 and we'll be back in just a moment. We have a little -- we're
15 going to aim to conclude this proceeding by 11:30. I'll be
16 back in about five minutes, and, as the parties are aware, I've
17 entered some additional orders. They were entered on Thursday
18 in response to an application for an order to show cause, and I
19 will let you know whether I think there's anything further we
20 need to take up today when I return. Thank you so much.

21 THE CLERK: All rise.

22 (Recess from 11:07 a.m. until 11:19 a.m.)

23 THE CLERK: All rise.

24 THE COURT: Thank you. Please be seated.

25 THE CLERK: Second call on all Christine Persaud

1 matters.

2 THE COURT: All right. How many more witnesses do the
3 objectors have?

4 Q. Bruce Green, and that's it, Your Honor.

5 THE COURT: Okay. And when is Professor Green
6 anticipated to -- well, let's talk about scheduling briefly.
7 How much time do we anticipate for Professor Green's testimony?

8 MR. KRINSKY: Your Honor, in terms of direct I think I
9 need, probably, less than an hour, though, certainly, if the
10 Court and opposing counsel are okay we would rest on his
11 affidavit itself as direct and then subject him to cross but
12 whatever the Court thinks is best and easiest.

13 THE COURT: I think we can begin with cross. It would
14 be acceptable to me to accept the direct testimony in affidavit
15 form and then begin with cross-examination.

16 MR. STREMB: Your Honor, in the first instance --

17 THE COURT: And this is expert testimony. Is that
18 right? That would be only if the parties can agree and
19 stipulate to his qualification and proffer as an expert.

20 MR. KRINSKY: Of course.

21 THE COURT: All right?

22 MR. STREMB: Your Honor --

23 THE COURT: Do you have that agreement yet?

24 MR. STREMB: Your Honor, the qualifications are not
25 the issue. We can stipulate that he's qualified. My objection

1 is to the admission of expert testimony of the nature
2 proffered.

3 THE COURT: Okay.

4 MR. STREMB: And I --

5 THE COURT: So it sounds like we will need to make a
6 record on that and I'll need to determine that. I'm looking at
7 an opportunity, I'll say unexpected; it arises from a
8 cancellation of another matter or a rescheduling of another
9 matter, on the afternoon of November 22nd at about 2:00,
10 something like that.

11 MR. KRINSKY: Your Honor?

12 THE COURT: It comes after a full morning of hearings.
13 We'll do our best to be able to start at 2. Is that a
14 convenient time for the parties and for Professor Green?

15 MR. KRINSKY: Your Honor, unfortunately --

16 THE COURT: If it doesn't work for the witness it
17 doesn't work.

18 MR. KRINSKY: Your Honor, the challenge I face,
19 beginning November 21st I'm on trial for approximately seven
20 days to ten days.

21 THE COURT: All right. I'm looking at a table full of
22 counsel, and able counsel each and all of them is. If your
23 presence is necessary we'll work around that trial schedule.
24 Do you think that the prospect of that trial proceeding is
25 highly likely?

1 MR. KRINSKY: We're being called out on the 21st. It's
2 been on the calendar for three months now. We're being called
3 out on the 21st to actually go to a judge. It is not --

4 THE COURT: State court, I take it.

5 MR. KRINSKY: State court. Correct.

6 THE COURT: Okay.

7 MR. KRINSKY: It is possible that we may not get
8 straight days, but I'm hesitant because I won't know until the
9 morning of the 21st. I'll know the morning of the 21st the
10 schedule for the next two weeks, essentially, but I won't know
11 until the 21st.

12 MR. CAMPO: Your Honor, I have a calendar issue as
13 well the week of the 21st. Not quite as extensive, it sounds
14 like, Mr. Krinsky's, but I have a trial commencing in Central
15 Islip at 9:30 on Monday the 21st.

16 THE COURT: So let's look for a different --

17 MR. CAMPO: And I'm not sure if -- it very well could
18 be over in a day, Your Honor, but I'm not positive.

19 THE COURT: Those are too many uncertainties on
20 each --

21 MR. CAMPO: But on --

22 THE COURT: -- side of the aisle.

23 MR. CAMPO: However --

24 THE COURT: Let's look for a different day.

25 MR. CAMPO: On Mr. Green's issue --

1 THE COURT: Yes.

2 MR. CAMPO: I'm sorry. I didn't mean -- on the issue
3 of Mr. Green I don't need to be here. If it's only going to be
4 Mr. Green Mr. Stremba could do it, so even if I couldn't make
5 it --

6 THE COURT: Any other --

7 MR. CAMPO: -- in the afternoon it wouldn't matter.

8 THE COURT: Any other witnesses?

9 MR. KRINSKY: That's all we anticipate.

10 THE COURT: So you're not able to commit at this point
11 to proceed on the 22nd. Let's look at the week of the 28th.
12 It looks like midday on Monday the 28th may be possible. I'm
13 giving you all my open time, but it's not --

14 MR. KRINSKY: I believe, Your Honor, that would work.
15 At least it gives me advance notice to be able to say to the
16 state court judge that there's another matter, and I'm sure
17 they'll work around me once I -- I, sort of, give them at least
18 a couple of day's notice.

19 THE COURT: Okay.

20 MR. CAMPO: Would midday mean 2 o'clock, Your Honor?
21 Is that what you meant by midday?

22 THE COURT: Well, let's say a little earlier than
23 that, because I have a class to teach at 4 o'clock. Ms.
24 Jackson, what would you like me to -- would you like to do it
25 morning or afternoon? Let's say 9 o'clock. We'll let you do

1 it in the morning. All right?

2 MR. KRINSKY: 9 a.m.?

3 THE COURT: 9 o'clock on the 28th.

4 MR. KRINSKY: Mr. Zilberberg has indicated that
5 although he will be overseas I will proceed. If it's just
6 going to be Professor Green then I will proceed on my own that
7 day without Mr. Zilberberg's presence.

8 THE COURT: So we'll -- and any witnesses beyond that?

9 MR. KRINSKY: No, Your Honor.

10 THE COURT: Okay. Do you anticipate -- I know it's --
11 you don't need to tell me yet. You don't need to know if you
12 have a rebuttal case planned, but if you are aware of any
13 rebuttal case you'll be putting in following the objectors
14 it'll help me plan to know that.

15 MR. STREMB: We haven't planned any.

16 THE COURT: Okay. All right. If that changes you
17 should contact --

18 MR. STREMB: Yes, Your Honor.

19 MR. KRINSKY: We will, Your Honor.

20 THE COURT: -- Mr. Krinsky and also the Court. So
21 let's see if we can do our best to complete this record on the
22 morning of the 28th with testimony of Professor Green. To the
23 extent that you may stipulate, and I say that with an open mind
24 to whatever issues you raise as to why we need the testimony,
25 but I can also say that in the context where there is no jury

1 but only the Court, and, as you say, it appears that there
2 would not be a dispute as to the objective qualifications of
3 the witness to be an expert, it may be that the most efficient
4 thing to do from the standpoint of the trustee's administration
5 of this Chapter 7 case, the presentation of the case by the
6 objectors and the Court's time, is simply to take testimony for
7 what it's worth and your arguments can go to the weight, to the
8 persuasiveness, perhaps. Those, of course, will be preserved.
9 All right. But we'll see on the morning of the 28th.

10 MR. STREMB: Your Honor, let me just -- one other
11 quick matter. Mr. Krinsky filed papers last week; I guess it
12 was a reply in connection with their motion to compel
13 production of documents. As we understood it there wouldn't be
14 any further papers filed unless Troutman Sanders first saw the
15 need to supplement the record, but papers have been filed.

16 THE COURT: I'm sorry. Could you indicate which
17 number on the docket? There were quite a number of things
18 filed.

19 MR. CAMPO: Your Honor, it's --

20 THE COURT: There were the --

21 MR. CAMPO: It's document -- I'm sorry, Your Honor. I
22 apologize for the --

23 THE COURT: It's all right.

24 MR. CAMPO: -- the frog in my throat. It's document
25 number 287. It was filed on 11/08.

1 THE COURT: Is this is the order to show --

2 MR. CAMPO: No, this is the --

3 THE COURT: Or -- excuse me. Application for the
4 entry of an order to show --

5 MR. CAMPO: No, Your Honor. This is -- the document
6 is entitled "Attorney Reply Affirmation".

7 THE COURT: All right.

8 MR. CAMPO: And it's a written --

9 THE COURT: Well, we'll be sure --

10 MR. CAMPO: It's an affirmation of Mr. Krinsky.

11 THE COURT: Would you like an opportunity to respond?

12 MR. STREMB: If Your Honor is --

13 MR. KRINSKY: If --

14 MR. STREMB: -- going to entertain the matter then we
15 would like an opportunity --

16 THE COURT: How much?

17 MR. STREMB: -- either on papers or when we come back
18 on the --

19 MR. KRINSKY: On the 8 --

20 MR. STREMB: The 28th.

21 MR. KRINSKY: On the 28th.

22 THE COURT: I'll give you time to put in papers in
23 response. It's helpful to the Court to have papers if you
24 think there are things that need to be said in order for me to
25 give them the attention they deserve it's -- I'll leave it to

1 you, but you can file something any time this week and I'll
2 sign it.

3 MR. CAMPO: And, Your Honor, if we were to -- just, if
4 it's okay, Your Honor, since this is a bad week, could we put
5 that -- anything we were going to put it in reply could we have
6 until next week?

7 THE COURT: I'm going to ask you to work out a
8 schedule and submit it in a --

9 MR. CAMPO: Sure.

10 THE COURT: -- proposed stipulation to the Court.

11 MR. STREMB: But --

12 THE COURT: Because that, you should not be required
13 to describe all of the different matters you're managing around
14 on the record.

15 MR. STREMB: No.

16 THE COURT: This is something I'm sure that good
17 lawyers can work out between each other

18 MR. STREMB: No, we appreciate that.

19 MR. KRINSKY: Whatever additional time they need, Your
20 Honor.

21 THE COURT: All right.

22 MR. KRINSKY: We have no objection.

23 THE COURT: You can work that out.

24 MR. KRINSKY: All right.

25 THE COURT: And submit something so everyone knows

1 what to expect. I expect that I will so order any reasonable
2 schedule that the parties submit.

3 There's the question of the 2004 issues that have been
4 raised again on behalf of the entity and individuals as to whom
5 such orders were entered. I read with care the papers that
6 were submitted, and it seemed to me appropriate, based on the
7 suggestion that the 2004 orders, very limited 2004 orders that
8 I entered, seemed to require a certain kind of production, that
9 it was not my intention to require issued orders that clarify
10 and amend, perhaps correct, those orders. They do -- conform
11 them to what I intended. And to the extent that the earlier
12 versions were not as clear as they should be I apologize to the
13 parties. In view of the ambiguity, though not raised until
14 last week, it did seem also appropriate to me to extend the
15 time from today, which was the initial date for the
16 commencement of production of documents, until later this week,
17 and I think I put it out to Thursday or Friday. Is that right?
18 So I will, understanding that we only have a few minutes. We
19 do have all these matters on the calendar.

20 I remain satisfied that based on the entire record
21 there is a basis for at least some preliminary documentary
22 inquiry, and I've tried to provide a limited, and now
23 clarified, template as to what should be produced, and to the
24 extent that there is a need to go beyond, as there well may be,
25 this very initial production of documents, and to the extent

1 that the parties, that the trustee may seek oral examination,
2 as opposed to just examination via the production of documents,
3 you know, all those matters remain before me. I will hear very
4 briefly anything further in response to the clarified orders
5 that were entered, but I must emphasize that we really only
6 have a few minutes for this. I gave a lot of care to the
7 matter at first. I've heard extensive argument on it. I have
8 reconsidered all of those issues in the context of the
9 applications that were filed and entered further and clarifying
10 orders, amended orders, that provide that this really is quite
11 limited initial production, indeed, and seeks, for example,
12 next to the Escobar order, documents related to loans or
13 business arrangements between, on the one hand, Mr. Klein and
14 his related entities and, on the other hand, the debtor and any
15 related entities. That is it may well be that these
16 individuals have no such documents, in which case it cannot be
17 produced what does not exist. But I think it's a logical first
18 step. It's difficult to imagine circumstances where such
19 production would not be supported by the record and the very,
20 very broad scope that is the scope of Rule 2004, and hence I
21 proceed with the opportunity to clarify, as I did, and in the
22 absence of a response, which I would typically very much seek,
23 if I enter an order that can be improved and I see that myself
24 I'll do it. If it's brought to my attention by parties I'll be
25 as responsive as I can be under the circumstances.

1 I want to add, I guess finally, that I do not view
2 this as simply the latest front in the long running battle
3 between these parties, nor do I expect counsel to treat it as
4 such. You may proceed. I emphasize --

5 MR. LEWITTES: Good morning, Your Honor. Joel
6 Lewittes, of counsel to Mr. Zilberberg. Listening to the last
7 few minutes of Your Honor's statements I feel rather bad that
8 apparently what I set forth in my order to show cause and
9 motion did not properly communicate itself to the Court.

10 THE COURT: The papers were very helpful. I studied
11 them with care, and I thank you for them. They led to the
12 entry of amended orders, so there's nothing whatsoever about
13 which to be sorry. I thank you for your input. As I
14 indicated, if I can improve an order, especially in a
15 complicated document production description context, I am keen
16 to do so.

17 MR. LEWITTES: I thank you for the additional four
18 days, which was granted in order to produce the documents, I
19 believe, on Friday rather than today.

20 THE COURT: To be clear to commence the production of
21 documents.

22 MR. LEWITTES: But to me that does not really focus
23 upon my motion for reconsideration. Now, you and I know that
24 technically in the federal courts there is nothing like a
25 motion for reconsideration, but we looked to and we were

1 inspired by Federal Rule of Civil Procedure Rule 59, to alter
2 or amend judgments on the grounds that an important matter of
3 law has been overlooked, clear error and manifest error.

4 The first question that any federal judge must
5 confront is do I have subject matter jurisdiction, because if
6 we look at 28 U.S.C. 1334(e)(1) a district court and via the
7 automatic reference of this court, exclusive jurisdiction is
8 give to the Court over property of the debtor at the time of
9 the filing of the petition. We have set forth, and if the
10 Court will permit -- give me a few minutes to set forth orally
11 why this Court does not have a jurisdiction to hear this
12 matter, the applications with respect to 2004, because we
13 submit that we have made at least -- at least -- a prima facie
14 showing that the debtor, there's no property interests, and
15 therefore the trustee and the estate have no property interest
16 in order to pursue a 2004. And we say that unless and until
17 this Court adjudicates that issue as to whether or not this
18 estate has any interests, whether legal or equitable, we cannot
19 and we should not, and I think the law does not permit us to go
20 farther.

21 There are several ground rules that we have to deal with
22 and that is if, in fact, we can demonstrate, and I believe we
23 can, that the debtor's estate has no property interest in
24 Caring then it doesn't matter whether the Court cites to, as it
25 did, in its order granting, in part, 2004 examinations, it

1 doesn't matter, because I don't disagree that Bankruptcy Code
2 Section 704(a)(4) directs the trustee to investigate financial
3 affairs of the debtor. But that is based upon a shown fact
4 that the estate has some property interest.

5 THE COURT: Isn't that argument a bit circular? How
6 could a trustee make that showing in the absence of some kind
7 of showing of some kind of opportunity to gather the relevant
8 information, and isn't that precisely what 2004 is intended to
9 do and in some many cases does? I see many situations where
10 trustees seek relief under 2004 and conclude there is in fact
11 no interest or no interest worth pursuing in the trustee's
12 business judgment.

13 But it seems to me --

14 MR. LEWITTES: I believe --

15 THE COURT: -- that your argument asks me to assume
16 away the process that the trustee is required by fiduciary
17 duty, including on behalf of this creditor --

18 MR. LEWITTES: He has no --

19 THE COURT: -- to pursue.

20 MR. LEWITTES: -- fiduciary duty if there's no
21 interest here. And it is not circular.

22 THE COURT: Not to you, but perhaps to me.

23 MR. LEWITTES: Well, I'm here not to spend too much
24 time, but I am here to try --

25 THE COURT: You have been overwhelmingly --

1 MR. LEWITTES: -- and con --

2 THE COURT: -- successful in --

3 MR. LEWITTES: -- try and convince you --

4 THE COURT: -- your opposition to this application. I
5 have entered the most minimal relief and response.

6 MR. LEWITTES: It doesn't --

7 THE COURT: Carefully circumscribed --

8 MR. LEWITTES: I --

9 THE COURT: -- in order to minimize the burdens on the
10 parties.

11 MR. LEWITTES: To me --

12 THE COURT: So I should say, again -- and I credit
13 your arguments to this extent. You have persuaded that the
14 most modest steps, the smallest steps or the small steps
15 reflected, perhaps they could be even smaller, but the small
16 steps reflected were the appropriate steps at this time without
17 prejudice to what further relief I might enter.

18 MR. LEWITTES: If not -- I'm not mistaken, I believe
19 that we cited a bank proceed -- eastern district case which
20 says, in essence, that if there is no property interest there
21 can be no 2004. And the answer's not that you have to find out
22 the property interest. The determination has to be made first.
23 This is not the kind of case which I had indicated the last
24 time I had the opportunity to approach this lectern. This is
25 not the run of the mill, garden variety type of case, which of

1 course we know certain powers are granted to the trustee. But
2 both --

3 THE COURT: I need to clarify something about my
4 approach to these things, for your benefit. I do not view any
5 one of the cases before me or that has ever been before me as
6 either run of the mill of garden variety.

7 MR. LEWITTES: What I was saying is not --

8 THE COURT: Not this one, not any other.

9 MR. LEWITTES: -- meant to be personal, Your Honor.

10 THE COURT: I do not take it personally. I think it
11 is important clarification here.

12 MR. LEWITTES: I just --

13 THE COURT: Your argument, I take it, is that this is
14 not a run of the mill, garden variety case. My response to you
15 is no case is a run of the mill or garden variety case in my
16 view. And I --

17 MR. LEWITTES: In that case --

18 THE COURT: -- stress these in council to bring that
19 professionalism to their efforts.

20 MR. LEWITTES: I'll withdrawal that --

21 THE COURT: But my -- but I think that --

22 MR. LEWITTES: -- that phrase.

23 THE COURT: -- would help.

24 MR. LEWITTES: But in any --

25 THE COURT: There's not one special set of Code and

1 rules for the Christine Persaud/Abraham Klein dispute.

2 MR. LEWITTES: Correct.

3 THE COURT: Thank you.

4 MR. LEWITTES: And that is why I'm here.

5 THE COURT: Yes.

6 MR. LEWITTES: Because I don't want to have a special
7 code of rules. What I am asking for is a code of rules that
8 complies --

9 THE COURT: Code or rules, I said.

10 MR. LEWITTES: -- the subject matter jurisdiction of
11 this Court. And I'm not bringing the cart before the horse.
12 The fact of the matter is that is the one question this Court
13 has to deal with.

14 Now, it's a very simple issue if the Court is willing
15 to grapple with it. We have helped, I believe, the Court in
16 reaching that decision by pointing to several matters. Number
17 one is the award by the arbitrator, which sets forth with
18 particularity the fact that these two parties, Persaud and
19 Klein, could not get together; that it was the finding of the
20 arbitrator that although originally Mr. Klein had a fifty-
21 percent interest the Court found that in the event and when a
22 transfer of the permits and what have you would be forthcoming
23 then Mr. Klein would have a hundred percent interest.

24 The trustee often takes the position -- he reads the
25 word fifty percent and says aha. But that was a prelude to the

1 final conclusion that once certain things have done, that is,
2 the transfer of the licenses, et cetera, in conformity with the
3 regulations and rules of the Department of Health, the State of
4 New York, then Mr. Klein gets the hundred percent of the
5 ownership. And the finality ends with the following: "It is
6 further ordered that if Persaud works at and for the benefit of
7 Caring during the pendency of the license transfer for and at
8 office of Caring for a minimum of thirty hours per week, she
9 will be entitled to compensation of one thousand dollars per
10 week and no more for any reason until the provisions of this
11 award are fully complied with and thereafter she has no
12 residual interest or rights in Caring."

13 If Ms. Persaud has no residual interest or rights in
14 Caring, must we not inquire as to what rights or interest the
15 trustee's estate has?

16 THE COURT: And isn't an appropriate way to do that to
17 provide with the clarification that was needed and, I think,
18 learned in your papers that to the extent that, for example,
19 any of these parties has information showing --

20 MR. LEWITTES: Wait a minute.

21 THE COURT: Speak with precision. Let me get my order
22 in front of me -- one of the orders. That anything concerning
23 a loan or business arrangement between Mr. Klein, on the one
24 hand, and the debtor, on the other --

25 MR. LEWITTES: My --

1 THE COURT: -- is something that makes sense --

2 MR. LEWITTES: No.

3 THE COURT: -- to produce. I -- if there such a
4 document, it seems to me that it is within a sensible scope,
5 narrowly construed, of a 2004 examination. If there is not,
6 then there's nothing to produce.

7 MR. LEWITTES: Your Honor --

8 THE COURT: And I -- it strikes me to say --

9 MR. LEWITTES: -- Your Honor, I have a --

10 THE COURT: There's an interesting -- as a sensible --
11 measured --

12 MR. LEWITTES: I --

13 THE COURT: -- the first step and the opportunity to
14 reconsider that determination leaves me satisfied that it is
15 that.

16 MR. LEWITTES: Your Honor, the way it works, in my
17 understanding and view, is that once there is an objection to a
18 2004 the burden then shifts to this trustee to show good cause
19 why he is entitled to the 2004. Your Honor has --

20 THE COURT: His applications --

21 MR. LEWITTES: -- the respon --

22 THE COURT: -- were first heard in September. The
23 record is quite complete. Hearings on these applications,
24 according to my docket, have been held on September 8th, 13th,
25 20th, 22nd, October 28th and November 8th. So the record is a

1 full record, and not only the record on reconsideration. And
2 it is amplified by many proceedings that took place, and I say
3 this with the greatest respect and deference, before you were
4 involved and in which you've no involvement.

5 So there's an entire record before this Court,
6 including of a Chapter 11 proceeding, that informs the
7 determinations that I've made. You need to --

8 MR. LEWITTES: But --

9 THE COURT: -- because of my obligations to a --
10 because of other obligations, we will need to bring this to
11 closure fairly soon.

12 MR. LEWITTES: Your Honor --

13 THE COURT: I will be as deferential as I can to your
14 desire to add to what you said in your papers. There is no
15 need to refute. You can probably tell I've studied your papers
16 with great care.

17 MR. LEWITTES: Your Honor, the only cause -- we have
18 a -- we have the application of the trustee. The only cause
19 discernible, if one can call that cause, is a bald statement, a
20 naked statement that the trustee owns Caring. That is not
21 fulfillment of the burden of showing cause. That is a
22 conclusory statement that has absolutely no basis in fact. He
23 doesn't even present any basis for saying that he has
24 ownership. That is not cause shown.

25 And without going into this matter, we have that

1 award. That award, whether it is confirmed or not, has been
2 determined to be, as a matter of law, subject to the rules of
3 collateral estoppel and res judicata. And we have cited a
4 Second Circuit decision to that effect, which is Jacobson
5 against Firemen's Fund. So I have that.

6 He has a single statement that says he owns it. We
7 can go beyond that. We have statements by former counsel of
8 Ms. Persaud admitting judicial admissions that she does not own
9 Caring and/or Liberty. And the last week we were here we had
10 another submission that it, by Persaud, indicating that she
11 doesn't own Caring or Liberty. It's a trust that owns them,
12 separate trust. So there is no cause shown or can there be any
13 cause shown at this moment.

14 And so, I return to my initial statement. And that
15 is, this Court should determine first, not afterwards, because
16 there's nothing for the trustee to check out. We have shown
17 him this and that, and his response is I own Caring. This
18 Court -- as a matter of subject matter jurisdiction, in my
19 view, this Court must determine first who owns a property
20 Caring. And once --

21 THE COURT: It would be uncomfortable --

22 MR. LEWITTES: -- we get to that --

23 THE COURT: -- with putting the trustee to that proof
24 without permitting an inquiry, whether it happens in the
25 context of the discovery tools in an adversary proceeding or

1 the tools available in the Chapter 7 process. I think
2 expecting the litigant to prove something without the ability
3 to inquire, as our system permits through discovery of whatever
4 type, would be a mistake.

5 MR. LEWITTES: Your Honor --

6 THE COURT: It would be a mistake of law. It would be
7 a mistake of case management. It would be --

8 MR. LEWITTES: -- Your Honor, you did not --

9 THE COURT: -- inefficient.

10 MR. LEWITTES: -- hear me --

11 THE COURT: I --

12 MR. LEWITTES: -- use the word --

13 THE COURT: You may see that differently. I -- but --

14 MR. LEWITTES: You didn't hear me use the word --

15 THE COURT: -- and if your -- your decision to make --

16 MR. LEWITTES: -- "prove".

17 THE COURT: -- I'm satisfied --

18 MR. LEWITTES: I didn't --

19 THE COURT: -- you would reach a decision consistent
20 with the decision desired by the client who has retained you.

21 MR. LEWITTES: Your --

22 THE COURT: That being said, I --

23 MR. LEWITTES: Your Honor, I didn't --

24 THE COURT: -- I appreciate your position. I --

25 MR. LEWITTES: I never said --

1 THE COURT: I have already modified to a great extent
2 my orders in response to what you've put in to --

3 MR. LEWITTES: With all due respect --

4 THE COURT: -- clarify them.

5 MR. LEWITTES: -- I never said the trustee has to
6 prove. I never used the word "prove". I said how about a
7 little good cause. That's something quite less than "prove".

8 THE COURT: All right. Let's --

9 MR. LEWITTES: And he hasn't done that.

10 THE COURT: -- let's hear from the trustee. Thank
11 you.

12 MR. PEREIRA: Your Honor, if I may?

13 THE COURT: Mr. Pereira, I need to remind you, as I've
14 reminded counsel for the objector that --

15 MR. PEREIRA: Good morning, Your Honor. John S.
16 Per --

17 THE COURT: -- there are some time constraints here.

18 MR. PEREIRA: I'm sorry, Your Honor.

19 THE COURT: Please proceed.

20 MR. PEREIRA: John S. Pereira, the Chapter 7 trustee.
21 Mr. Lewittes talks about cause and connection. Your Honor,
22 these are the facts whether the -- Mr. Klein and his counsel --
23 many counsel -- want to hide them or not. Mr. Klein claims to
24 be owed two million dollars based on a default judgment which
25 he obtained. He went to arbitration. The arbitration that he

1 went to, he obtained an arbitration award on default.

2 The arbitration award itself starts with a very
3 telling statement from the arbitrator where it says Mr. Klein
4 was looking for the benefit of his bargain. He sued Ms.
5 Persaud to be a partner in Caring. He never -- it was never
6 alleged that he owned fifty percent before the arbitration
7 award. He alleged that he had given and lent a lot of money to
8 caring and evidently or allegedly to Liberty and as a result of
9 the default arbitration award, because Ms. Persaud did not
10 appear, the arbitrator somehow awarded him not -- would up
11 saying that he owned part of Liberty, not only Caring but also
12 Liberty.

13 The award. There's no nexus -- let me see if I can
14 give you a connection. In the arbitration award, Mr. Lewittes
15 has no problem quoting the second paragraph. The first
16 paragraph -- the paragraph above that which was quoted says
17 "Creditor Klein has a fifty percent ownership interest in both
18 Caring and in Liberty" -- there's a -- "in accordance with the
19 terms of the agreement, subject to the approvals of the agency
20 with jurisdiction which interest in Liberty shall cease."

21 By the way, Liberty was never even a party to the
22 arbitration yet the arbitrator gave him fifty percent of
23 Liberty but that's another issue. "Which interest in Liberty
24 shall cease as soon as he or his designee is approved by the
25 agencies with jurisdiction to be the sole operator of Caring."

1 It doesn't say -- he says he's a -- in the same paragraph it
2 says he's a fifty percent owner of Caring and he's to be the
3 sole operator of Caring. That does not mean that he owns a
4 hundred percent of Caring.

5 THE COURT: Mr. Pereira, I'm looking for any insights
6 you have in a practical response to this situation. I remain
7 concerned, deeply concerned, that the administration of this
8 case is -- poses significant risk of being quite unproductive
9 from a creditors standpoint. I'm always concerned, as I'm sure
10 any trustee is, when the great majority of the actions that the
11 trustee proposes to take seem to be opposed by the primary
12 creditor. Now I'm further concerned when the Bankruptcy Court
13 seem to be used as the next front in a litigation battle. It's
14 unproductive in the bankruptcy process to use this process that
15 way.

16 So I say, stepping back, looking at the bigger
17 picture, I would like to hear from you, not only in the
18 question of cause and subject matter jurisdiction, which is a
19 full stop question that must command a court's full attention
20 whenever it is raised and even when it is not. But also, on
21 the question of a practical approach here. I do see I have
22 2004 requests that have been pending before me for a long
23 time --

24 MR. PEREIRA: Since August.

25 THE COURT: -- inconsistent with the need to move this

1 case forward. And I will say that even upon a rethinking of
2 all of the grounds and everything I had in mind in proceeding
3 as I did, I remain satisfied that with clarification to be sure
4 that my orders say what I wished them to say, as clearly as I
5 can do that, that it is still a sensible way to proceed. But
6 Mr. Pereira --

7 MR. PEREIRA: I agree, Your Honor.

8 THE COURT: -- you're the trustee here. And I --

9 MR. PEREIRA: I have not seen the order but I agree
10 that --

11 THE COURT: Well, they were entered on --

12 MR. PEREIRA: -- if we can proceed --

13 THE COURT: -- Thursday?

14 MR. PEREIRA: -- even on the amended orders, it will
15 be helpful. Your Honor, also, Mr. Klein and counsel --

16 THE COURT: But the question was -- I'm looking for --

17 MR. PEREIRA: Go ahead.

18 THE COURT: -- views you may have as trustee in this
19 case on a practical approach to proceed here and I need them
20 very promptly because we do have a meeting downstairs of our
21 bar and court that begins in approximately five minutes, as I
22 previously advised the parties. We had intended on this
23 hearing ending at 11 and we had to start late. There were
24 circumstances quite beyond my control but now we do only have a
25 few minutes.

1 MR. PEREIRA: Your Honor, we have been through
2 examinations of Ms. Persaud at the Section 341 meeting and
3 other conferences with her and her many counsel along the way.
4 We have been told that Caring is probably ten times the size of
5 Liberty and that it is worth, according to published reports
6 that have been in various local papers and the testimony of Ms.
7 Persaud, is worth between ten and thirty million dollars.

8 We know that there are allegations that while Ms.
9 Persaud owned Caring -- and we believe she still owns Caring by
10 the virtue of what counsel doesn't tell you which is that the
11 Appellate Division has reversed -- has vacated the judgment
12 that confirmed the arbitration award.

13 THE COURT: But not reverse the arbitration award, Mr.
14 Pereira.

15 MR. PEREIRA: But the arbitration award was obtained
16 by default, Your Honor --

17 THE COURT: Does that make it any diff -- an order
18 obtained from this Court on default is still an order of this
19 Court.

20 MR. PEREIRA: By a private arbitrator, Your Honor.
21 And --

22 THE COURT: Pursuant to a valid arbitration clause? I
23 realize that's before the state court but, Mr. Pereira, I --

24 MR. PEREIRA: Your Honor, the Appellate Division --

25 THE COURT: I urge you not to overstate your position.

1 MR. PEREIRA: I don't. I don't, Your Honor. The
2 Appellate Division not only vacated the judgment but took the
3 extraordinary step of saying that a valid defense to the
4 arbitration had been raised and ignored.

5 THE COURT: All right.

6 MR. PEREIRA: And that they --

7 THE COURT: Well, let me ask you this question. Do
8 you think it makes sense to permit the parties to litigate to
9 closure that issue in the state court where it is presently
10 pending and to defer all of these proceedings until that is
11 complete? It seems to me that your true and first battlefield
12 may be the state court and I would be prepared to consider a
13 joint request to proceed that way. It might significantly cut
14 down on the costs of administration of this case.

15 At the same time, in the absence of consent, I'm
16 prepared to keep this case moving on a fast track here in the
17 Bankruptcy Court.

18 MR. PEREIRA: Your Honor, I --

19 THE COURT: So --

20 MR. PEREIRA: -- fast track. A fast track we will
21 proceed --

22 THE COURT: Tell me the status of the state court
23 proceedings? I need to know the status of the state court
24 proceedings.

25 MR. PEREIRA: I am not aware of the status of the

1 state court proceedings.

2 THE COURT: I think you need to aware of those
3 proceedings, Mr. Pereira, don't you?

4 MR. PEREIRA: Say again?

5 THE COURT: Don't you think you need to be aware of
6 those proceedings?

7 MR. PEREIRA: I'm sorry, Your Honor. I --

8 THE COURT: I need to know that. I'm surprised you
9 don't. Would you like to confer with nonbankruptcy counsel?

10 MR. PEREIRA: No. Your Honor, the reason I don't know
11 it is there was a motion made before -- by Ms. -- again, one of
12 Mr. Klein's motions to say that the -- to vacate this -- the
13 vacator of the confirmation of the judgment. He says that --

14 THE COURT: Is that in the appellate division or is
15 that in the New York Supreme?

16 MR. PEREIRA: It's appellate division rendered the
17 decision. They took an appeal to the court of appeals. That
18 appeal was not -- they --

19 THE COURT: Yes.

20 MR. PEREIRA: The court of appeals refused to hear the
21 appeal.

22 THE COURT: Yes.

23 MR. PEREIRA: You have the appellate division is -- as
24 a final judgment, vacating -- vacating the confirmation of the
25 arbitration award --

1 THE COURT: What is the current --

2 MR. PEREIRA: They then made -- they -- Mr. Klein then
3 made, in this Court, another motion, a motion to have Your
4 Honor declare that he Appellate Division judgment is null and
5 void.

6 MR. PEREIRA: Mr. Pereira, I'm familiar with the
7 record before me. My question is the record in the state
8 court. Are you aware of what is presently pending in the state
9 court?

10 MR. PEREIRA: To my knowledge, there is nothing
11 scheduled in the state court.

12 THE COURT: The matter has been remanded to New York
13 Supreme, isn't that correct?

14 MR. PEREIRA: Yes. That's what the order said, Your
15 Honor.

16 THE COURT: And what is now happening in response to
17 that remand?

18 MR. PEREIRA: As far as I know, nothing has been done
19 with it.

20 THE COURT: Would you like to confer with your
21 counsel? With the debtor's counsel? Who is standing up.

22 MR. PREZIOSI: Judge, just very quickly. It's waiting
23 to see what happens in this Court. Everything is stayed there.
24 It has been remanded to Supreme --

25 THE COURT: Has there been --

1 MR. PREZIOSI: -- for the confirmation hearings --

2 THE COURT: All right.

3 MR. PREZIOSI: -- of the arbitration award --

4 THE COURT: All right. Well, let's --

5 MR. PREZIOSI: -- and --

6 THE COURT: All right. It's 11:58. We need to bring
7 this to closure today. I'm going to note with respect to the
8 adversary proceeding, the appearance of the plaintiff and the
9 defendant will have an adjourned date. We have, of course, the
10 continued hearing on the application to employ counsel. We
11 have the applications for orders to show cause. To the extent
12 that these seek reconsideration of the orders for reasons
13 specified at various paragraphs and on grounds that they,
14 orders as entered, seek the production of documents that do not
15 make sense in the context of the case.

16 And I'm not stating nearly as effectively as was
17 stated in the document -- in the argument. For example, this
18 seems to require, with respect to Joel Klein, Joel Klein to
19 produce financial information regarding three different
20 situations; namely (a) entities old or controlled -- owned or
21 controlled by Abraham Klein; (b) entities owned or controlled
22 by Abraham Klein and the debtor; and (c) entities owned or
23 controlled by the debtor. I trust that the orders as amended
24 address that ambiguity to the extent the orders had that and I
25 let the orders speak -- the amended orders speak for

1 themselves. But that issue, I think, has been addressed. So
2 to that extent, the request for relief is responded to.

3 Likewise, the concern or argument made in paragraph
4 14, we consider why the subject of the application should be
5 ordered to produce financial information of entities owned or
6 controlled by Mr. Klein, despite the fact that these entities
7 have no connection to the debtor. Not my intention, not, I
8 believe, what the order reflected. Clearly not what the
9 amended order reflects. So, again, that issue's been
10 addressed.

11 Next paragraph 15, there is a question concerning
12 punctuation. I have reviewed with care the punctuation and I
13 hope I have improved it. Thank you for the opportunity. With
14 respect to the arguments set forth in the "Finally" paragraph
15 of -- paragraph 15 -- 16, a concern about needing to proceed on
16 November 14th, that being today, I took that to be, indirectly,
17 a request for a little more time. I accommodated that request.
18 So each and all of those points has been responded to.

19 There is separately a question as to subject matter
20 jurisdiction. I do not see, on careful initial reflection and
21 further reflection, a subject matter jurisdiction presented
22 here. But because subject matter jurisdiction is so very
23 important, I invite you to proceed with further briefing on
24 that issue and you can do that on an ordinary schedule. I
25 don't not think that given the pace at which this matter's

1 proceeding, it does not seem to me that order to show cause
2 pace is required. If you'd like an expedited briefing
3 schedule, you may negotiate it and submit it to the Court
4 consensually. I take it you are -- whatever you may disagree
5 on, you've been able to work together on things like that.

6 And so -- and I'll say your application for the entry
7 of an order to show cause has been granted in part as reflected
8 in the orders previously entered and denied without prejudice,
9 in part as reflected in the record. That is to say you may
10 renew it as indicated. You deem it appropriate and
11 concentrating on those issues that are so very important. I'll
12 make a similar notation on each of these applications for order
13 to show cause. I will remind the parties that that is a very
14 special kind of tool and should be used absolutely whenever
15 it's supported by the record and in compliance with our rules
16 and procedures.

17 I think that brings us to the 2004 applications. We
18 have what has been denominated as the reconsideration orders.
19 I will make a similar entry there. I have reconsidered them. I
20 have --

21 MR. LEWITTES: Your Honor --

22 THE COURT: -- already entered amended orders and to
23 the extent that I am not granting further relief you seek, you
24 may work on a briefing schedule. Advise the Court by
25 submission and we'll take it from there. I am now constrained

1 to bring this hearing to closure and because of the scheduling
2 requirements that I've noted previously. All other matters on
3 the Court's calendar will be carried to our next date and that
4 is, again -- Ms. Jackson?

5 THE CLERK: The 28th at 9:00.

6 THE COURT: The 28th at 9:00. I know you each and all
7 have many further things to say. In order to accommodate each
8 of you in fairness, I would have to accommodate all of you and
9 so I shall simply bring this to closure and wish you a good
10 day.

11 MR. LEWITTES: I just -- Your Honor, I have to know
12 if --

13 THE COURT: We are concluded.

14 MR. LEWITTES: -- about the discovery. Is -- they're
15 stayed now until we deal with subject matter jurisdiction?

16 THE COURT: I've indicated to you that you may proceed
17 as referenced in the record. The amended orders are on file.
18 Thank you so much.

19 THE CLERK: All rise.

20 (Whereupon these proceedings were concluded at 12:03 p.m.)

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I N D E X

T E S T I M O N Y

| WITNESS | EXAM BY | PAGE | LINE |
|---------------|-------------|------|------|
| Abraham Klein | Mr. Krinsky | 9 | 25 |
| Abraham Klein | Mr. Stremba | 28 | 9 |
| Abraham Klein | Mr. Krinsky | 45 | 3 |
| Abraham Klein | Mr. Stremba | 60 | 14 |

E X H I B I T S

| KLEIN | DESCRIPTION | ID. | EVID. |
|---------|---|-----|-------|
| 124 | 3-page e-mail from Mr. Wang to Mr. Klein dated 11/24/08 | | 19 |
| 8-A | E-mail outlining China real estate project development with several attachments | | 48 |
| TRUSTEE | DESCRIPTION | ID. | EVID. |
| O | Affidavit of Abraham Klein | | 36 |
| N | Mr. Klein's affidavit dated August 15, 2011 | | 38 |

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I N D E X, cont'd

R U L I N G S

| DESCRIPTION | PAGE | LINE |
|---|------|------|
| Application for the entry of an order to show cause has been granted in part as reflected in the orders previously entered and denied without prejudice, in part as reflected in the record | 93 | 6 |
| Requests for reconsideration on motions for 2004 examinations granted as amended | 93 | 22 |

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB (CET**D-486)
AAERT Electronic Certified Transcriber

Veritext
200 Old Country Road
Suite 580
Mineola, New York 11501

Date: November 16, 2011

United States Bankruptcy Court

Eastern District of New York
271 Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800

IN RE:

CASE NO: 1-10-44815-ess

Christine Persaud

SSN/TAX ID:

CHAPTER: 7

xxx-xx-0247

DEBTOR(s)

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

Notice is hereby given that:

A transcript of the proceeding held on November 14, 2011 was filed on November 16, 2011 .

The following deadlines apply:

The parties have until November 23, 2011 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a Transcript Redaction Request is December 7, 2011.

If a Transcript Redaction Request is filed, the redacted transcript is due December 19, 2011.

If no such Notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is February 14, 2012 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber Veritext (888-706-4576) or you may view the document at the public terminal at the Office of the Clerk.

Dated: November 17, 2011

For the Court, Robert A. Gavin, Jr., Clerk of Court

Notice Recipients

District/Off: 0207-1

User: btaylor

Date Created: 11/17/2011

Case: 1-10-44815-ess

Form ID: 295

Total: 8

Recipients submitted to the BNC (Bankruptcy Noticing Center):

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